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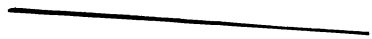
JANE DUGDALE

IN MEMORY OF HER BROTHER

CHARD L. DUGDALE



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THE

PUNISHMENT OF DEATH.

A SELECTION OF ARTICLES

FROM

THE MORNING HERALD,

WITH NOTES.

The names of party may have charms for others——we judge of Statesmen by their acts alone.

VOL. I.

LONDON:

HATCHARD & SON.—SMITH, ELDER, & Co.

1836.

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PREFACE.

At a Committee of the Society for the Diffusion of Information on the subject of Capital Punishments, held on Monday, November 30, 1835, the following Resolution was unanimously adopted:—

Resolved—'That the Articles upon the Criminal Law which have 'appeared from time to time for several years past, in the 'columns of the *Morning Herald*, are of a character to espe- 'cially call for the grateful acknowledgment of this Com- 'mittee, as having materially contributed to promote the recent 'Amelioration of the Penal Code;—and, that this Committee 'do forthwith cause a Selection of those Articles to be pub- 'lished in a permanent form, in testimony of their value, and 'in furtherance of the great object of rendering the Criminal 'Law *more efficient*, by obtaining for it the support of reason, 'and of enlightened Public Opinion.'

In conformity with this Resolution, the present Volume has been compiled, and, in a few weeks, will be followed by a second, in continuation of the Selection.

The publication of the Work is alike proper, whether regard be had to the merits of these Articles in

the *Morning Herald*, the necessity of promoting a further amelioration of the Penal Code, or, the preservation to society of a record of the warfare waged, and the triumphs gained over a system of vindictive legislation, which disgraces the name of Christian Britain, and, is without any existing parallel in the civilized world.

For, it is not to be forgotten in the history of Criminal Law Reform,* that, within the last six years, more than one attempt has been made, not only to perpetuate the revolting severity of its provisions, but to effect, were it possible, a retrograde movement—a return once more to the dark ages of legislative barbarism. A memorable instance occurs in the last six pages of this Volume, to which the Reader's attention is particularly directed.†

The very possession of office in the Government of this country, seems to bring, too often, with it a withering influence, in blighting the moral perceptions, and deadening the human sympathies of some, who, no sooner attain the *power* to be eminently useful,

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* This Work, it is almost superfluous to state, is in no degree intended to supersede the Publication, expected from Mr. WOOLRYCH, as a sequel to his recent useful and very interesting little Volume, entitled 'The History and Results of the present Capital Punishments in England; to which are added, full Tables of Convictions, Executions, &c.'

† See p. 316, *et seq.*

than they lose the *inclination*. The rule is not an universal one, since there are some few notable exceptions. To this influence, so often the bane of principle in public men, the only powerful check is the voice of PUBLIC OPINION, expressed through the medium of an enlightened and independent PRESS. Modern times abound with examples of this apostacy: nor are they found only in modern times. Let us give an ancient and memorable instance.

The Author of "Utopia," the eloquent and great Sir Thomas MORE—that prodigy of wit and learning, the patron of science and literature—when advocating mild and bloodless punishments, three centuries ago, on grounds both of religion and policy, used the following line of argument. He said—"If, by the Mosaical law, though it was rough and severe, as being a yoke laid on an obstinate and servile nation, men were only fined, and *not put to death* for theft, it was not to be imagined, that, under the Christian law of mercy, in which God treats us with the tenderness of a father, he has given to us a greater license for cruelty, than he did to the Jews." He then goes on to say, that the putting thieves to death is not lawful; and, that, to inflict the same punishment for *theft* and *murder*, is absurd, and of ill consequence to the commonwealth, since, *if the punishment be the same*, there is more security to the criminal, and less danger of discovery,

when he, who can be the best witness, is put out of the way: so that, he emphatically adds, "*terrifying thieves too much, provokes them to cruelty.*"

It is a melancholy proof of what we have before advanced—as well as of the identity, in all ages, of our corrupt and unstable nature, but more strongly marked when *mere expediency* is adopted as the rule of action, —that the same hand which penned these just and enlightened sentiments in the "Utopia," *previously* to its Author becoming Lord Chancellor of England,* penned also the following passage *subsequently* to his elevation to that high office,—when prosperous ambition seems to have exercised a deteriorating influence over the mind and heart of that distinguished man. The Reader will observe, not only the difference in sentiment from the passage first quoted, but the sarcastic levity of tone, so unbecoming the subject, in which that change of Sir Thomas MORE's opinion—that direct attack upon his own former principles—is expressed.

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* The peculiar merit of Sir Thomas MORE, as LORD CHANCELLOR, is given by one of his biographers in the following words:— 'So indefatigable was he, also, that although he found the office filled 'with "Causes," some of which had been pending for twenty years, 'he despatched the whole within two years, and, calling for the next, 'was told that there was not one left; which circumstance he ordered 'to be entered on record.'———LUTHER bears testimony to his talents as a learned man, and "the King's Chiefest Counsellor;" but adds, that he was "a very notable tyrant," and that "he shed the blood of many innocent Christians."

'Now to th entent that ye may somwhat se what 'good crysten fayth Syr Thomas Hytton ("whom" —he elsewhere says—"the bishoppes of Rochester 'and Caterbury slew at Maydstone") was of, this 'newe sayncte of Tyndale's canonysacyon, in whose 'burnynge Tyndale so gayly glorieth, and whyche 'hath his holy daye so now appoynted to hym, that 'sayncte Polycarpus muste gebe hym place in the 'calēdar: I shall some what shew you what holsome 'heresyes this holy martyr helde.'

Then, after enumerating various other "heresyes," held by HYTTON, Sir Thomas MORE recites the following:—

'He held also [that it] is not lawfull neyther 'for the kynge of England, nor for any other cristē '[Christian] prince, to make any law or statute for the 'punyshemet of any theffe or any other cryme, by 'whyche lawe any man shulde suffer deth. For, he 'sayde, that all suche lawes be contrarye to the gospell, 'whyche wyll no man to dye.'*

It is not unworthy of remark, that those just and benign views of Sir Thomas HYTTON, regarding criminal jurisprudence, appeared at an era when the light

* "The cōfutation of Tyndales answer made by Syr Thomas More, knyght, lorde chaūcellour of Englonde.—Prentyd at London By Wyllyam Rastell. 1532. Cum privilegio." [A folio volume—*Vide* "Preface to the crysten reader."]

of Christian intelligence was beginning to brighten our moral horizon—at the dawn of the Reformation:—nor is it less deserving our regard, that, their adoption by the State, might have saved even MORE himself from the tyrant's axe.*

LONDON, March 12, 1836.

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* The real cause of Sir Thomas MORE'S impeachment is too well known to require being stated here. After a year's imprisonment, he was brought to his trial at the King's Bench, in Westminster, upon an indictment for high treason, in denying the King's supremacy. Upon receiving sentence as a traitor, he addressed the Court, concluding with these words:—'I have nothing further to say, my Lords, 'but, that as the blessed Apostle St. Paul was present, and consented 'to the death of Stephen, and kept their clothes who stoned him to 'death, and yet they are now both holy saints in heaven, and shall 'there continue friends for ever; so I verily trust, and shall therefore 'right heartily pray, that though your Lordships have now been Judges 'on earth to my condemnation, we may yet hereafter all meet together 'in heaven, to our everlasting salvation; and so I pray God preserve 'you all, and especially my Sovereign Lord the King, and send him 'faithful counsellors.'

As they were conducting this great man from Westminster Hall to the Tower—with the axe carried before him, according to the usual custom—a very affecting scene took place between Sir Thomas and his daughter, who eagerly pressed through the guards to see him. She could, however, only articulate, 'My father! Oh! my father!'—when Sir Thomas, more affected by this than by all that had happened, recommended her to submit to the will of God. She was then reluctantly separated from him; but thinking this might be the last time, she again broke through the crowd, and embraced him in speechless agony.

Having received notice early in the morning, July 6, 1535, that he was to die that day at nine o'clock, he was led out to Tower Hill, and suffered in the same manner as the virtuous and lovely Lady Jane GREY did in a succeeding reign, who perished at the age of seventeen!

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CORRIGENDA.

Page 10, line 28, (table,) for "Total PROSECUTED," read "TOTAL." This error is already corrected in part of the Edition.

Page 80, line 26, for "*seven persons*," read "*six persons*."—(See Note p. 167.)

Page 167, line 1 of the Note, for "is a matter," read "is matter"

Page 252, line 30, for "every lawyer may," read "every lawyer in Court may"

THE

PUNISHMENT OF DEATH.

A SELECTION OF ARTICLES

FROM

THE MORNING HERALD,

WITH NOTES.

Meetings to petition Parliament for a Reform of the Criminal Law.

We are glad to observe that a large and respectable class of society are resolved to bring the subject of "Capital Punishments" once more under the notice of the legislature. Meetings to petition parliament for the amendment of the Criminal Law by the abolition of the punishment of death in cases where sanguinary examples are abhorrent to reason, justice, and sound policy, have been held at Southampton, Reading, and Plymouth, at which places petitions to parliament have been agreed to, and have been since numerously and respectably signed. We understand similar petitions are in progress of signature at several other places. —*Morning Herald, Friday, March* 12, 1830.

General character of the Criminal Code—Speech of Mr. Bullar *at a public meeting, Southampton.*

The vindictive character of our Criminal Code has long been a reproach to the humanity, and a stain upon the civilization of England.

Efforts have been made from time to time, by enlightened and humane men, to redeem us from this national disgrace. Those efforts have been hitherto abortive; for our legislature seems to be tenacious of the bad pre-eminence in penal legislation which our code of punishments has obtained for us in the eyes of the Christian world—nay, Pagan antiquity could boast a greater advancement in civilization in this respect than England, adorned with all the moral and intellectual trophies of the nineteenth century!

It is time that the Statute-book should be purified from those exterminating laws which, like the code of DRACO, may be said to be "*written in blood.*" But DRACO's laws were scarcely enacted when they were repealed. The mind of the Athenian people revolted at their cruelty—they expunged the barbarous decrees of callous, unreflecting severity, and consigned the name of their author to the execration of history.

Alas! in our Christian legislature no man has yet appeared intrepid, persevering, and fortunate enough, to achieve the honourable and glorious labour of making our criminal laws consistent with the principles of reason, of justice, and judicious policy. The task which ROMILLY*

* As the name of ROMILLY is inseparable from the subject matter of these Articles of the *Morning Herald*, we can scarcely avoid subjoining some information from the *Edinburgh Review* (Dec. 1830), regarding the manuscripts of that great and good man, whose enlightened exertions opened the way for the triumph of those principles which all friends of humanity must regret he did not live to witness.

'It is understood that the manuscripts of Sir Samuel ROMILLY 'contain matter of a very high interest to the science of jurisprudence. 'They are said to comprise his speculations upon all the most impor- 'tant questions which have of late agitated men's minds connected 'with this subject. He had directed his attention to the amendment 'of the law, especially the criminal law, from a very early period; and 'had perceived the expediency of some reforms, and the necessity of 'others, long before it ever entered into the imagination of most other 'men that any juridical thing could be different from what it is, or that

failed to accomplish, and MACKINTOSH attempted in vain, has not since called forth the talents and energies of any other within the walls of parliament. The narrow limits which Mr. PEEL prescribed to himself in his "Amendment of the Criminal Law," has left this task untouched, for some man

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'any thing could be better than the provisions of the English law in 'all its branches. Of the various improvements which he proposed, 'and which would all have been thought wild imaginations of a visionary speculator, had they been made public at the time, it is remarkable 'that a large proportion are now either the law of the land, or almost 'certain of speedily becoming so. From hence we may draw a very 'favourable inference touching the rest which are still resisted, and 'predict their soon being accepted, if we were made acquainted with 'their nature and purport.

'Can any one doubt that it would be of the greatest benefit to the 'community to have access to these important manuscripts, were it for 'no other reason than to give the proposed reforms of the law the 'advantage of such high authority in their favour? They would have 'not merely the sanction of his name, whom all wise men have revered, 'and all good men loved; but also, in some sort, the authority of the 'legislature itself, which has adopted so many of his propositions, and 'still hesitates to receive the rest. But there is every reason to expect 'matter valuable for its intrinsic importance from such a quarter; and 'even where late writers may have gone over the same ground, there 'is a high degree of curiosity in observing how far Sir Samuel ROMILLY 'had gone in the path of law reform, in an early age, as it were, and '*before* men had been taught by Mr. BENTHAM to speculate with 'unrestrained freedom. We therefore venture to hope that these 'valuable remains will no longer be withheld from the world. Their 'truly illustrious Author, when he bequeathed them to the care of his 'chosen friends, (Mr. now Lord BROUGHAM and Mr. WHISHAW,) 'charged them by no means to think of his literary reputation, but only 'to consider whether or not the publication of these papers was likely 'to benefit mankind;—a noble sentiment, well worthy of the exalted 'mind from which it proceeded—a sentiment of which were they ever 'to lose sight, those friends would betray their trust.'

[To the foregoing information we may add, it is found upon enquiry, that it will not now be long before all the Mss. of Sir Samuel ROMILLY will be laid before the Public.—ED.]

of greater moral courage and more comprehensive intellect than his legislative exertions have *yet* displayed.

On various occasions we have endeavoured to bring this subject under the notice of the public and of parliament. We have always looked upon the multiplicity of capital punishments, which disgrace our Statute-book, as not less abhorrent from humanity than at variance with the soundest principles of civil wisdom.

All great legislators and writers on law have held the opinion, that *certainty* of punishment is much more effectual in repressing crime, than an extreme, but *capricious* severity. Now, in a country far advanced in civilization, it is scarcely possible that laws of a cruel and inhuman nature can be invariably carried into effect. If all the persons, who receive sentence of death at the *Old Bailey*, were actually to pass into the hands of the executioner, the feelings of the people would not tolerate the repeated exhibitions of the wholesale work of blood; or, if they did, the frequency of the scene would so brutalize them, that they would think no more of the waste of human life than of the spilling of water! And what an awful responsibility would rest upon a Government that could so harden and degrade the hearts of its subjects!

What a number of convicts, too, have sentence of death *recorded* against them at the several Assizes, who, as a matter of course, never suffer the last punishment of the law!

These facts prove that we have a criminal code which is equally cruel and impracticable. Why not change it for one so just and reasonable, in the apportionment of the penalty to the offence, as to be capable of *certain* and *uniform* execution? If death ought not to be inflicted—if, in fact, it dare not be inflicted on the greater number of those to whom our laws award it, is not the solemn passing of the sentence, and the recording it in open Court, and in the face of the people, a mockery of retributive justice, which is equally impolitic and indecorous?

Then see the other evils which arise from such a state of the law:—one Judge is humane and sensitive; another has less of the milk of human kindness in his disposition. The one will not leave any man for execution who is not convicted of some very heinous crime; the other will be less compunctious about taking away the life of a fellow-creature, and send wretches to the scaffold who are guilty of less flagrant offences, because the law gives him the power of doing it. Thus it may be said that men are executed or saved, not by a *certain* law, but by judicial *caprice*.

While this state of things continues, there is a great number of persons in society, who, rather than avenge a wrong by risking the life of the offender, desist from prosecution altogether; by which means the very severity of the law counteracts its own purpose, and he who, under a more rational system, would have received a proportionate punishment, escapes with perfect impunity!

We are glad to see, however, that many intelligent and respectable persons are exerting themselves in various parts of England to obtain, by public meetings, and petitions to the legislature, such a revision and reform of the criminal laws as the interests of justice, and the progress of Christian civilization, demand.

At a meeting convened for the purpose at Southampton, the other day, a Mr. BULLAR exposed the present system in a speech seasoned with great power, and replete with the testimony of convincing facts. There is one passage, in particular, which we cannot avoid quoting, and in the sentiments of which we fully concur:—

> "But we are told," says Mr. BULLAR, "by some, that ours is a weak humanity; that legislators must have stouter nerves, and do their duty, and not allow those, whom they nickname humanity-mongers, to interfere. We reply, if this is a weak humanity, it is the weakness of Dr. JOHNSON, who could never think that 'to pick the pocket, and to pierce the heart, are equally criminal, whatever epithets of reproach or contempt his confession, as to unjust punish-

ments, might incur from those who confounded cruelty with firmness.' It is the weakness of JUDGE BLACKSTONE, who said, that 'to shed the blood of our fellow-creatures, is a matter which requires the greatest deliberation, and the fullest conviction of our own authority; for life is the immediate gift of GOD to man, which neither he can resign, nor can it be taken from him, unless by the command of Him who gave it.' If this tenderness of human life is, indeed, a weak humanity, it is the weakness of BECCARIA and MONTESQUIEU—of ERASMUS, and Sir Thomas MORE, and CHILLINGWORTH—of GOLDSMITH, and FRANKLIN, and HOWARD—of FOX, of PITT, and of ROMILLY. So deeply (says Mr. WILBERFORCE) was Mr. PITT convinced of the improper severity of our laws, that, to my knowledge, that distinguished person had it in contemplation to submit the whole Penal Code to the revision of some able lawyers, for the purpose of digesting a plan to diminish the sanguinary nature of punishments; nay, it is the weakness of that solemn and venerable Liturgy which earnestly prays for 'all prisoners and captives,' and declares of the Almighty that 'he willeth not the death of a sinner, but rather that he may turn from his wickedness, and live.'"

At this meeting Mr. HAMMOND, the Recorder of Southampton, attended, and strongly supported the object and prayer of the petition.

We trust such meetings will become more general, and that the voice of enlightened humanity will be raised throughout the kingdom, until the laws which doom our fellow-creatures to perish unjustly, shall themselves perish before the irresistible power of PUBLIC OPINION!—*Morning Herald, Monday, March* 15, 1830.

The Forgery Laws—Petition presented by Mr. Secretary PEEL.

It has long been our lot to contend against the prejudices of Government and the legislature, in advocating the necessity of an effectual revision of our sanguinary Criminal Code.

The law of forgery, in particular, we have from time to time shewn, both in principle and its practical consequences,

to be one of the most objectionable on the Statute-book. Our exertions at one time seemed hopeless, but we persevered: our view of the question has slowly acquired a considerable accession of valuable support, and now *half a conversion* has been worked even in Mr. PEEL. We rejoice, on account of the power he wields, that the Home Secretary has, in this instance, made so considerable an advance towards the clear perception of the sound principles of criminal jurisprudence. We expect he will become, before many more sessions pass away, a complete and thorough proselyte to those enlightened opinions at which his prejudices used to startle, and his veneration for established errors rise in arms.

We give Mr. PEEL credit for having presided over the task of repealing a great number of useless and *obsolete* statutes; and for having *consolidated* the multifarious provisions of the Criminal Law. So far much has been done in pioneering the road towards improvement; though we cannot give unqualified praise to a work in which we are able to point out no small number of defects. But let that pass for the present. The design, as far as it went, was good; and the precedent of wholesome innovation which it established, will be an argument and a stimulus to more comprehensive improvement.

The rational and judicious adjustment of the principles of Criminal Law, and the *proportionate adaptation* of punishment to crime—that greatest and noblest work of penal legislation—remains yet to be accomplished. But what friend of humanity and sound justice can despair, seeing that Mr. PEEL himself presented a petition to the House of Commons, on Monday night, praying the abolition of the punishment of death in all cases of forgery. This petition was from the "Society of Friends" in Ireland—a humane and intelligent class of people.*

* The following Copy of the Petition presented by Mr. PEEL is extracted from the printed Journals of Parliament.

'A PETITION of Members of the Society of Friends, commonly

It is true the Right Hon. Secretary did not avow a complete concurrence in the prayer of the petition, but he admitted that he partially acquiesced in their views, and clearly shewed that his mind was in that state on which a more general spirit of petitioning would, no doubt, make a very sensible impression. He said he "felt flattered by being entrusted with this petition, but was afraid he could not go the *whole length* with the petitioners in recommending the abolition of the punishment of death in *all* cases of

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'called Quakers, on behalf of themselves and of the other members of 'that Society in *Ireland*, was presented, and read; setting forth, 'THAT the Petitioners have been instructed by the last General Meet- 'ing of their religious Society held in *Dublin*, to convey to the legis- 'lature a representation of the deep interest they feel in the amelioration 'of that part of the Criminal Code of this Realm which affixes to certain 'offences the punishment of *death*; THAT, whilst the Petitioners 'believe it right to declare that their objections to the punishment of 'death derive their chief strength from *a full and serious conviction of 'its repugnance to the precepts of the Gospel*, they are persuaded that 'the propriety of abolishing this punishment *can be sustained on other 'grounds*, and that, with reference to this question, as well as others 'of public or private interest, it will be found that the course *prescribed 'by the obligations of Christian duty is alike dictated by sound and 'enlightened policy*; THE Petitioners submit, that *the fallibility* of all 'human tribunals is a consideration which ought alone to have great 'weight in influencing those engaged in the framing of Criminal Law, 'to reject a punishment irremediable in its nature, and so awful in its 'consequences as that of death; THAT the *inefficacy* of the punish- 'ment of death in preventing the commission of crime is proved by long 'and mournful experience; and that the continued prevalence of crimes 'of an aggravated character in those districts where public executions 'are most frequent, is a fact of unequivocal import;' [the reader will bear in mind that this Petition came from *Ireland*;] 'THE Petitioners 'are hence strongly impressed with the belief, that, so far from a salu- 'tary effect being produced by these dreadful spectacles, they have a 'powerful opposite tendency, and by exciting the vindictive feelings of 'some, and by familiarizing all with the destruction of human life, 'they harden the hearts of spectators, and thus *prepare the way for 'the commission of future deeds of violence*; THAT the forfeiture of life

forgery." But, upon Mr. LENNARD expressing his regret that the Right Hon. Gentleman had not been able to adopt the humane suggestions of the petitioners, he observed—"I only said I would not go the whole length with the petitioners—I agree with them in part. I now give notice that I shall, on Wednesday, move for leave to bring in a Bill to consolidate and amend the laws relating to forgery; and, perhaps, when I say that it is my intention to dispense with the capital punishment in many cases, the motion of the

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'for forgery, theft, and other offences against property is opposed to 'the feelings of a large, and, in the belief of the Petitioners, an increas- 'ing portion of the community, and that the extreme rigour of the Law 'in these cases frequently defeats its object, by *preventing the prosecu- 'tion* of offenders, and thus affording *impunity to crime;* THAT cir- 'cumstances existing in *Ireland*, tend in a very striking manner to '*counteract* the objects for which public executions are designed, 'namely the deterring of others from the commission of crime, the popu- 'lar sympathy being in many cases strongly excited in favour of the 'criminal, and the awful event consequently in great measure divested 'of its ignominious character; THAT the interest felt by the Petitioners 'in the amelioration of the Criminal Code is not of recent origin; but 'they feel themselves warranted in an especial manner to renew their 'Petition to the Legislature at the present time, inasmuch as by a late 'alteration in the Law of Evidence, whereby *testimony on affirmation* 'is rendered admissible in Criminal Courts, *they are placed in a more 'responsible situation than heretofore* with regard to this momentous 'subject; THE Petitioners therefore approach the House with their 'respectful but earnest entreaty that, amongst the important considera- 'tions connected with the improvement in the administration of the 'Law which are intended to come under deliberation in the course 'of the present session, the subject herein set forth may not be over- 'looked, but that it may obtain the early and patient investigation of 'the House; and the Petitioners fervently desire that, under the influ- 'ence of Divine Wisdom, the House may be enabled to render the 'Criminal Code in all respects consistent with the Gospel dispensation 'under which we live, that so our Country may exhibit to surrounding 'nations an example of legislation on true CHRISTIAN PRINCIPLES.' —(*Appendix to the Votes and Proceedings of the House of Commons*, 22° *die Martii*, 1830, *Petition* 'No. 334.')

Honourable Member will be unnecessary." This was in allusion to a notice given by Mr. LENNARD, who said he would call the attention of the House to the subject after the recess.

We hope, however, that Mr. LENNARD will not allow his own more decisive measure to be superseded by this *compromise* between enlightened principles and legislative barbarism with which Mr. PEEL expects the country to be satisfied. The objection to the punishment of death for forgery is not an objection of *degree*, but *principle*.* Mr. PEEL

* In introducing the subject of FORGERY, it may not be amiss to insert the following remarks which appeared in the *Edinburgh Review* of Dec. 1818, in an article bearing chiefly upon *Bank of England* prosecutions for forgery subsequently to the Act for restricting cash payments. (See ART. IX. *Returns of Prosecutions and Convictions for forging Notes of the Bank of England from* 1783 *to* 1818; *laid before the House of Commons*, 21*st April*, 1818.)

'Before we make any observations on the moral revolution which 'followed the stoppages, we entreat the attention of every reader who 'considers the prevention of crimes as any part of the object of Govern-'ment, to the following authentic and extraordinary documents.'

Several tables of PARLIAMENTARY RETURNS are then given, which we have not room for: the subjoined abstract is taken from them.

BANK OF ENGLAND *prosecutions for Forged Notes in* ENGLAND AND WALES.

	CAPITAL Convictions.	Convictions for having Forged Notes IN POSSESSION.	ACQUITTALS.	Total PROSECUTED.
In 6 years ending with 1788.....	3	—	*none.*	3
In the next 8 years, the period immediately *preceding* the suspension of cash payments in Feb. 1797 ...	*none.*	—	1	1
In 21 years *succeeding* the suspension of cash payments in Feb. 1797	313	521	164	998

The Return itself is dated 21st April, 1818, and signed 'JOSEPH KAYE, *Solicitor* to the Bank of England.'

says he is not prepared to state that capital punishment is to

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The writer in the *Edinburgh Review*, in allusion to the comparative paucity of executions prior to the year 1797, remarks—'Yet even 'this number, inconsiderable as it now appears, was sufficient at that 'time to excite the disapprobation of wise, and the indignation of good 'men, against laws which inflicted *death* on such a crime as forgery, 'and offered *sacrifices to the Moloch of Paper Credit.* * * * * * * 'The time was not yet come when the number of convictions rendered 'the uniform execution of the law too horrible to be hazarded. Cri-'minal justice had not become a lottery, in which it was a mere chance 'whether a man guilty of forgery should *escape* being transported, or 'be *hanged.*

'The year 1798 opened a new scene. The Act for authorizing 'the Bank of England to stop payment, passed in 1797; and another 'Act was passed in the same year, the necessary consequence of the 'former, but still more directly applicable to our present purpose—to 'enable the Bank to issue notes under the value of five pounds. The 'number of those who suffered *death* for the forgery of bank-notes *in* '1798 *and the two succeeding* years, was twice or thrice as great as 'that of *all* who had suffered for the same offence for *fifty years* before 'the suspension. From a Return of '*none*,' in the eight years *before* '1797, we suddenly pass to a Return of 146 *capital executions*, for 'this offence, in the eight years which *followed* that unfortunate year!

'These frightful contrasts multiply at every change of our point 'of view. Four *prosecutions* for forgery by the Bank of England are 'to be found from 1783 to 1797. In the equal period from 1797 to '1811, the number is 469!—They were multiplied more than a hun-'dred-fold!—Well might the preamble of a statute, passed in 1801, '(41 Geo. III. cap. 49.) recite, that '*The forgery of bank-notes has* '*of late increased very much in this kingdom!*' But the preamble 'does not confess the whole truth.—Even at that time it was not an 'offence increased, but an offence *created.* One fatal measure of 'State had, even then, caused more blood to flow for forgery in *three* 'years than had been shed in England for that offence during *fifty* 'years before. Perhaps no civilized Government has by one act given 'so dreadful a wound to the morality of a people. The visible connec-'tion between the issue of small notes and the effusion of blood, is one 'of the most frightful parts of this case. * * * * * * In the 'former periods there were *no* capital executions:—in the latter, 116 'executions occurred in *four* years.

be discontinued in dangerous cases of forgery. We say that

'We have been foolishly told that the increase (as it is called) of 'forgeries is only a part of the general progress of criminality. The 'sudden leap made by forgery in 1798 is a sufficient answer. Other 'very dangerous crimes have diminished in the same period, and it is 'more reasonable to ascribe a great part of the increase of some other 'offences to the progress of that depravity to which the forgery of 'bank paper gave the first impulse.

'The various Returns which contain the above information, were 'not obtained without struggle. Much resistance was made to the 'production of many of them. More was threatened, and abandoned 'only on the eve of a division, when it was apparent that all resistance 'would prove vain.

'To complete this view of the subject, we must conclude with a 'short account of the judicial proceedings relating to the forgery of 'bank-notes since the dissolution of parliament. During the Summer 'Assizes we recollect no *capital conviction* for this crime. In the state 'of the public temper on this subject, the Bank seems to have thought 'it more prudent to prosecute only for the transportable offence, of 'knowingly *possessing* forged notes.

'At the *September Sessions* at the *Old Bailey* (1818) a long array 'of prosecutions for forgery reappeared, but attended with clear 'proofs that, on this subject, it was no longer safe to overlook the 'excited feelings of THE PUBLIC.—*Thirty-eight* persons were 'arraigned on the *capital* charges of forging notes, or knowingly utter- 'ing them; and *also* on the minor charge of knowingly possessing 'them. A scene appears to have taken place among these wretched 'persons, very unsuitable to the deliberation and gravity of a court of 'justice. Such was the general confusion, that one prisoner pleaded '*guilty* to the capital charge, and *not guilty* to the inferior charge. 'Another confessed his guilt, retracted, and afterwards repeated his 'confession, and at last pleaded not guilty. As the trials advanced, 'the JURIES began to manifest that they shared the general feeling of 'their countrymen. One jury desired that the forgery of the signature 'to the note should be proved by the *signing clerk* whose name had 'been used, instead of the *Bank inspector*,—whose evidence had 'hitherto been thought sufficient. On the next day, a juryman 'declared that he was not satisfied by the affirmation of the witnesses 'that the notes *were* forgeries, and that he desired to ascertain *how* these 'witnesses knew them to be so. Latterly, the ordinary course of the

whatever the degree of the crime is, it does not alter the principle. It is a crime of *fraud*, not of *force*. It is an act

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'Bank had been to indict for the transportable *as well as* the capital 'offence; to forbear offering evidence to affect life against forgers who 'had *pleaded guilty* on the charge of knowingly possessing counterfeit 'notes; but to proceed to the *last extremity* against all who refused 'to own that they were guilty of that offence. On the 18th September, 'two women, in spite of the sincerely humane advice of the prosecutors 'and judges, refused to purchase life by the confession of their crimes. 'The first, a miserable prostitute, alleged that she had received the 'forged note from a man unknown to her;—one of those defences 'which might in her case be true, and yet impossible for her to prove. 'She was convicted.—The other woman, unappalled by this example, 'persevered in her plea of not guilty, and was acquitted. Had this 'woman accepted the proffered mercy of her prosecutors, we must now 'suppose that she would have been unjustly transported. It became 'apparent, after her acquittal, that *many innocent* persons might have 'suffered that punishment; that the *life* or *death* of those who were 'charged with forgery, might often depend on their possessing nerves 'strong enough to encounter the danger of a capital trial; that bold 'guilt might often escape, and timid innocence frequently suffer. It is 'a melancholy consideration that, however undesignedly, the fear of 'death may have been employed, in the administration of justice, to 'deter those, who were conscious of no crime, from proving that they 'were guiltless.

'At the December sessions (1818), it was thought necessary to 'produce all the evidence of forgery which had been formerly called 'superfluous, and at last to permit the examination of the Bank wit-'nesses respecting *the grounds* of their knowledge, which till that 'time had been generally understood to be interdicted. *But the public 'feeling was now too deep to be conciliated by these concessions.* In 'the face of all this evidence, two persons were acquitted on the per-'fectly unimpeachable ground that the jury did not believe the notes 'to be forgeries. From that moment the capital prosecutions were 'relinquished; and juries, with *the same*, or *very similar evidence*, 'readily convicted several prisoners of the *inferior* offence.

'One other circumstance occurred during these last sessions. 'Three prisoners capitally convicted in *September*, and whose fate had 'remained in suspense during the intermediate three months, *were 'executed immediately after the acquittals in December.* These

of swindling committed with pen and ink, instead of being effected by other modes of circumvention. It is not a crime

'criminals, it must be observed, were convicted on that evidence, and 'under those restraints on examination, to which the prosecutors and 'judges seem in the prosecutions in December to have no longer 'adhered; and they *were executed* for forgery at the moment when '*capital* prosecutions for that crime appeared—to say the least—to be 'suspended.'

The foregoing observations from the *Edinburgh Review* relate almost exclusively to the forgeries of *Bank of England* notes. As to *other* forgeries, they were common to a degree that defies all calculation. Of this there is abundant evidence, as well from records, as from living witnesses. But then those forgeries were generally hushed up; to save the delinquent's *life*, he was allowed to get '*out of the way*.' In some cases, indeed, and those not a few, the injured parties did not conceive it unfair that, while they had the malefactor in their power, his relatives should make reparation. They may have looked on this somewhat in the light of restitution, though the law views such an act as the *compounding of felony*. We mention no names. But the Bank of England doubtless never adopted this course.

Of the numerous testimonies as to the frequency of unprosecuted forgery, while the crime was capital, we will trouble the reader with but two.—The first is that of a *Banker*,—a *London* Banker,—of the first respectability,—who is reported to have made the following statement in his place in parliament, about the time the article, which we have quoted from the *Edinburgh Review*, was written.

'Mr. John SMITH said that neither the House nor the country 'at large were aware of the *numerous offences of this kind that were* '*compromised and hushed up*. Bankers were perpetually liable to the 'effects of this crime. They had indeed formed an association, and 'appointed *a Solicitor* for the prosecution of offenders; but *they* were 'very often moved by pity, and acted *contrary to the principles of* '*their association*.'—*Debate in the House of Commons on Sir Samuel Romilly's Bill, Feb.* 25, 1818.—(For evidence as to the frequency of forgery upon *Country* Banks, see an interesting letter referred to in the *Morning Herald* of May 20, 1830.)

The other testimony is that of Mr. Alderman HARMER, formerly a criminal lawyer of most extensive practice in the metropolis: and one, too, who was frequently retained for *the defence* of prisoners, and consequently whose evidence is that of a man of great *practical* informa-

of force that no vigilance can guard against, but may often be defeated by the exercise of a little ordinary caution; and

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tion. That gentleman having given much valuable evidence upon the question before a Committee of the House of Commons in the year 1819, his opinion was considered of great importance when the forgery laws came under discussion again, in 1830; and accordingly the Marquis of LANSDOWNE wrote to him upon the subject. Their correspondence is here subjoined.

'Lansdowne House, June 23, 1830.

'SIR,

'I trust that although I have not the pleasure of your 'acquaintance, the object of this letter will be a sufficient excuse for 'my troubling you with it.

'In considering the evidence produced before the Committee of 'the House of Commons, relating to the punishment of forgery, when 'I was induced to undertake the conduct of the Bill in the House of 'Lords, there was no witness whose testimony produced a stronger 'impression on my mind than yours, from the peculiar opportunities you 'must have had of observing the habits and motives of criminals.

'Ten years, however, have elapsed since you gave that testimony; 'and the favour I have to beg of you is to acquaint me, if not incon- 'venient to you, whether subsequent experience has confirmed, or in 'any degree varied, the impressions you then described as prevailing 'upon your mind.

'The clause relating to the abolition of the punishment of death 'will be strongly opposed in the Committee on the Bill; and it will be 'contended, I understand, that no greater reluctance is apparent in 'prosecutors in cases of forgery, than in others *where capital punish- 'ments are enacted.*

'I have the honour to be, SIR,

'Your most obedient servant,

'James Harmer, Esq.' 'LANSDOWNE.'

'Hatton Garden, June 25, 1830.

'MY LORD,

'The letter which your Lordship did me the 'honour to send me, dated the 23d instant, has reached my hands; and 'I feel great pleasure in giving your Lordship the information it 'requires.

because human nature revolts at the shedding of blood for

'In answer to your Lordship's question, as to whether my opinion 'has varied on the subject of capital punishment for forgery, since I 'gave evidence before the Committee of the House of Commons ten 'years ago, I beg respectfully to assure your Lordship, that, so far 'from the opinion I then entertained being in the least changed, the ex- 'perience of every subsequent year has only tended MORE STRONGLY 'TO CONFIRM my previous impressions; and I feel now as I did then, 'that, by mitigating the punishment, although *prosecutions* may, and 'doubtless will *multiply*, *a less number* of forgeries will be committed; 'and for these reasons:—Many bankers and tradesmen, who now rely 'on the security of the law, as being sufficient to deter persons from 'committing forgery, *do not use sufficient precaution* to guard against 'the offence, and thus give a facility to a needy and desperate man to 'succeed. If the punishment be mitigated, no such reliance will 'remain. Merchants and tradesmen, and perhaps even bankers, will 'adopt additional precaution, make more diligent inquiries, and scruti- 'nize with greater care and attention all the negotiable securities 'which may come to their hands. Attempts at frauds will thereby be 'more speedily detected, and in proportion as the chances of success 'are rendered less sure, and detection more likely, men will be deterred 'from attempting to commit the offence.

'I believe, my Lord, that many persons, previously to committing 'forgeries, deliberate on the consequences, and are induced to proceed 'from a persuasion that a want of due caution on the part of those 'whom they intend to defraud, will render success pretty certain, and 'should detection follow, that they have still many chances of escaping 'conviction and punishment. The most prominent of these chances is 'the reluctance which prosecutors and witnesses feel to give evidence 'against a forger, because the life of the individual is involved; and 'next, the sympathy, from the same cause, which juries always feel 'for the accused, and which frequently induce them to invent or adopt 'any surmise, however absurd, in his favour, and to acquit in the 'clearest cases.

'It is, my Lord, a matter of *common occurrence* for prosecutors 'and witnesses to devise some stratagem to secure the escape of the 'offender; and I have known them to suppress facts, and colour their 'evidence, to effect their object. When reproved for such conduct, they 'have justified the act by asserting that it was better to err in their 'testimony, than to be the means of taking away the life of a fellow-

such offence, bad as it is, we have reason to think that about

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'creature. Often, my Lord, have I been consulted by prosecutors and 'witnesses as to whether they were liable to any other consequences 'than forfeiture of their recognisances by neglecting to attend to give 'evidence; and I have known a prosecutor not only submit to pay the 'amount of his own recognisances, but the amount of those of a witness 'also, whom he prevailed upon to keep out of the way, because his 'testimony would have convicted the prisoner; and the only motive for 'paying this money, and foregoing a public duty, I know to have been 'a merciful feeling to save human life. Had the punishment been short 'of *death*, no consideration would have induced the gentlemen to whom 'I allude, to forbear prosecuting.

'I have likewise known several instances in which avaricious and 'unprincipled men, finding a debtor to them involved in pecuniary 'difficulties, and likely to fail, have, by stating to him that they would 'cash him any bill he could bring them, partly suggested to the insol-'vent the idea of fabricating securities, and thereby invited the com-'mission of crime; not with a view of prosecuting the offender, but to 'get a forged instrument into their possession, which they could use as 'the means of extorting the payment of the whole of their debt either 'from the unfortunate man, or his relations and friends; and, in very 'many cases which have come under my observation, near relatives of 'an accused party have, in a measure, ruined themselves to buy up the 'bills he has forged, but who would have left him to his fate, had the 'punishment been any thing short of death.

'The cases which come before the public for prosecution on bills 'of exchange are not, in my opinion, any thing nearly equal to the de-'tections which take place, and the *compromises* which are made there-'upon. Respectable *bankers*, merchants, and solicitors engage in such 'compromises the more readily, because, from the merciful feelings of 'juries, a conviction is uncertain; but many more on account of the 'highly penal consequences which would result from a successful pro-'secution. If, therefore, the punishment were less severe, both these 'considerations would be removed, and compromises would, of course, 'be less frequent.

'*I cannot calculate, even within a hundred, the number of compro-*'*mises* (of the description above alluded to) *which have come within* '*my own knowledge;* but I remember a learned and excellent JUDGE 'interesting himself to get up a forged bill, which had been passed by 'a worthless man whom the Judge had only known as a schoolboy;

three-fourths of the forgeries committed in the City of London are never prosecuted! So does a vindictive law defeat the ends of justice!—*Morning Herald, Wednesday, March 24, 1830.*

Mr. *Secretary* PEEL's *new Forgery Bill.*

Any Bill brought into Parliament by a Minister of the Crown to alter and *amend* the laws which inflict capital punishment for forgery, we regard as an indication of the approaching triumph of sound and enlightened principles of justice over the spirit of a barbarous legislation.

There are many who consider such a measure as only a reluctant concession to a more humane policy, extorted from power by public opinion; but we care not, so long as improvement take place, whether it was originally suggested by those who have the power of carrying it into effect, or whether the reputation of such reformers is founded on the borrowed

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'and to save this very man from transportation, his Lordship would not 'have advanced a farthing, or spoken a word.

'I have been induced to take the liberty of troubling your Lord-'ship with these remarks, to shew that, although *prosecutions* may, 'and, no doubt, will increase, for some short time at least, after the 'abolition of the punishment of death for forgery, still that circumstance 'ought not to be considered as a demonstration 'that the lessening the '' punishment has increased the number of forgeries.' On the contrary, 'I should consider it as *strongly proving the utility of the mitigation*, 'because punishment would become more certain, and the law conse-'quently *more effective.*

'I have the honour to be, MY LORD,

'Your Lordship's obedient and very humble Servant,

'JAMES HARMER.'

'The Most Noble the Marquis of Lansdowne.'

[The proposition of the writer in the *Morning Herald*, (March 15, 1830) is therefore capable of being established, we think, to the satisfaction of posterity. To adopt his words,—'*These facts prove* '*that we have a Criminal Code which is equally cruel and impra-*'*ticable.*'—ED.]

wisdom of others. It has been our own lot to be for years engaged in endeavouring, as often as occasion offered, to draw the attention of parliament and the public to the sanguinary nature of our Criminal Law. The infliction of death for forgery, among others, we have repeatedly deprecated as disproportionate to the offence, repugnant to humanity, and opposed to the interests of justice. The power of public opinion has been, in the meantime, working its way through society, and continually adding to the number of those who look to the amelioration of the criminal code as one of the greatest triumphs which civilization has yet to achieve.

On this subject not less than about sixty petitions have been presented to the House of Commons, in the present session, from various cities, towns, and districts in England, besides the petition from the Society of Friends in Ireland, which Mr. PEEL presented the other night. All these petitions were respectably and numerously signed; and, what is well worth observing in reference to petitions praying for an abolition of capital punishments in cases of *forgery*, they were signed by the *Bankers* generally of the places from which they purported to come.

It is also a strong attestation of the improved state of public feeling on this question, that the Magistrates and Clergy, in a considerable proportion, were among the petitioners.

Having stated thus much, we will ask, is Mr. PEEL's Bill relative to forgery calculated to satisfy the advocates of rational and enlightened justice, so far as that branch of the Criminal Law is concerned? and will it obviate all necessity for further petitioning on that particular question? We confidently say it will do no such thing. What is it Mr. PEEL proposes to do? Let us hear himself:—He 'should retain the capital punishment in all forgeries of the Great Seal, Privy Seal, and Sign Manual, in forgeries of wills, on the public funds, of bank and money notes, or orders for the payment of money; in short, as to all documents which

represent money, and are negotiable and transferrable for it. He would remit the capital punishment in all those cases where serious doubts overhung its infliction, and where the complainants by due caution could have saved themselves, such as forging receipts for money, orders for the delivery of goods, forging stamps, uttering forged stamps, attempting to defraud by uttering forged orders for goods, the fabrication of the material of the Bank of England paper, and forging deeds and bonds.' As to all these forgeries Mr. PEEL proposes to remit the capital punishment, because, he says, they come within the principle of prevention by the exercise of more diligence and caution in the transactions of business.

Now as to all *practical* purposes, we affirm Mr. PEEL's Bill will leave the law of forgery just where it found it. For he only proposes to erase the punishment of death from the Statute-book in cases where the sentence of death is never actually carried into execution; and to leave the sanguinary law in all its force in those cases which are ever productive of the cruel and revolting exhibitions which humanity deplores, and rational justice condemns.

In the debate of Thursday night, Mr. F. BUXTON is made to compliment Mr. PEEL for the improvements which he had introduced into the Criminal Law. This, we understand, was a mistake; Mr. BUXTON's eulogy on Mr. PEEL's exertions having reference only to his regulations for the better government of gaols, and nothing else. We knew that Mr. BUXTON had been an advocate for a thorough reform of the criminal code, in which he delivered, during a former debate, one of the best speeches of the kind ever delivered in the House of Commons; and we were therefore surprised to hear that he expressed something like satisfaction at the very limited 'amendment' of the law executed by Mr. PEEL.

We now say what we have repeatedly said before—that the punishment of death in all cases of forgery must be abolished.—*Morning Herald, Saturday, April* 3, 1830.

Presentation of a Petition against the Forgery Laws by the BISHOP *of* LONDON.

We are glad to observe that the BISHOP of LONDON, in presenting two petitions to the House of Lords, on Friday night, from certain persons in London and Northamptonshire, praying for the abolition of the punishment of death in cases of forgery, stated his acquiescence in the prayer of the petitions, and expressed a hope soon to see *capital punishments* effaced from the Statute-book altogether, except in cases of great atrocity.*

This sentiment is worthy of one who is a chief among the Pastors of the Church, to whom his less exalted brethren look up for instruction and example, and whose high station imposes on him the greater responsibility of diffusing the true principles of Christianity among the people.—*Morning Herald, Monday, April 5*, 1830.

Petition against the Forgery Laws from the Liberty of the Tower of London.

In another part of our columns will be found a copy of the petition of the Inhabitant Householders of the Liberty of

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* 'I have *no criterion*,' said Sir Samuel ROMILLY, 'and the learned 'author has furnished me with none, by which to determine how death 'is *deserved*.' This remark will be found in his admirable refutation of the unsound and unchristian doctrines of *expediency* resorted to by PALEY, in defending the punishment of death. Speaking of that writer, ROMILLY says, 'there is none whose arguments deserve more 'attention than Dr. PALEY, not so much on account of the force or 'ingenuity of those arguments, as of the weight which they derive 'from the respectable name of the writer who uses them. Every 'thing that is excellent in the works of such a man, renders his errors, 'where he falls into error, only the more pernicious. Sanctioned by his 'high authority, they are received implicity as truths by many persons 'who, if they met with them in a writer of inferior merit or reputation, would not fail to canvass them, and to detect their fallacy.' —(*Substance of Sir Samuel Romilly's speech in the Commons, Feb.* 9, 1810.)

the Tower of London, lately presented to the House of Lords, praying for an abolition of the penalty of death in cases of forgery; and for a revision of the laws inflicting capital punishment in general.

The language of this petition is temperate, but strong—its arguments solid and convincing. It bespeaks as much intelligence as humanity, and with equal simplicity and force advocates principles that cannot fail to have the sanction of enlightened public opinion. Among other things, the petitioners say—

'They deplore the frequency of capital punishments, the number of 'criminals *executed* in England and Wales in seven years (ending 'with 1826) being 528, or an average of 75 every year—that these 'sanguinary examples do not appear to produce the intended effect 'of repressing crime, the number of capital *convictions* in the same 'period having been 7,656, or an average of 1,093 every year—that 'this relaxed execution of the law, in inflicting the sentence upon 'one only in *fourteen* convicted offenders, tends to encourage the 'commission of crime, by the uncertainty of punishment.'

It is this *uncertainty* of punishment which tends to encourage crime far more than occasional acts of terrible and unjust severity can repress it. There can be no more bitter satire upon the cruelty of the Criminal Law than the laxity of its execution. The penalty of death allotted by law to various crimes is not carried into effect in the great majority of instances, because human nature revolts at its barbarity, and the very Judge before whom the culprit is convicted, feels an irresistible repugnance to enforce the sentence which it is his duty to pronounce or record.

Where, of the vast number whom the law annually condemns to death, but one in fourteen is executed, all criminals are encouraged to entertain a hope that, notwithstanding the ferocious spirit of the law, they shall escape its severity; and, on the other hand, the apprehension that life may be taken for an offence for which man's blood ought not to be shed, deters humane and considerate people from coming

forward as prosecutors; and thus, in consequence of the very same excessive severity of the laws, many wrongs go unavenged, and many offenders escape with complete impunity.

This is very much the case with respect to forgery, which, in spite of the numerous sanguinary examples annually made, is far more prevalent than it was under the COMMON LAW, when punished, like other frauds, as a misdemeanour. If the dreadful punishment of death could repress a crime, how effectually ought forgery to be repressed! What hecatombs of human victims have been offered up upon the scaffold to what is called the 'commercial interests,' or rather to the great idol Mammon, from the Perreaus and Dr. Dodd down to the last unfortunate culprit who expiated his offence at Newgate!—and yet all this waste of life—all this work of extermination, does not prevent in any degree the perpetual recurrence of the crime, and the perpetual exhibition of similar acts of human sacrifice.

Mr. PEEL, it is true, proposes an alteration in the law; but that alteration goes to perpetuate the infliction of the punishment of death in all cases of forgery touching negotiable securities for money. Here the veneration for Mammon overcomes every sentiment of humanity and sound justice;—that deity, when once offended, is only to be appeased by human blood;—his system of justice is energetic and compendious: it weighs not degrees of criminality in the balance—it cuts away all inequalities of guilt with the same axe.

The influence which this exterminating principle has exercised over the parliament of England, is recorded in a vast number of statutes relative to forgery, all of which avoid nice calculations upon the *gradations of crime* by the indiscriminate infliction of *death!—Morning Herald, Thursday, April* 8, 1830.

BANKERS *opposed to the punishment of death for forgery.*

We direct the attention of our readers to what took place in the House of Commons last night relative to the law of forgery, on which we have not, at present, space to offer any comment. The statement of Mr. F. BUXTON will be found peculiarly interesting to those who are anxious for a judicious amelioration of the barbarous and ineffective severity of the law.—*Morning Herald, Friday, April* 9, 1830.

[The statement referred to in the foregoing paragraph was as follows:—]

'HOUSE OF COMMONS.—FORGERY.

'Mr. F. BUXTON said he had received several letters from most 'respectable individuals in different places, expressing their strong 'desire that the capital punishment should be avoided. The first was 'from a banker in Gloucester, in which he stated that, for his part (and 'he knew such was the sentiment of many others in the same line of 'business), he would rather be exposed to any loss than prosecute for 'the capital offence. The next letter was from a respectable clergy-'man in Glasgow. The following is an extract:—

'*The bankers to a man have been favourable.* I am given to 'understand that there is hardly a bank in town (if, indeed, there be 'even one) that has not been in circumstances in which they have 'forborne to prosecute, rather than expose the offender to the certainty, 'or even the risk of death; and this forbearance has been exercised 'sometimes in circumstances of an aggravated nature.'

'The third was from a banker in Newcastle, and was as follows:—

'I now wish to offer you my testimony on the subject of forgery, 'in confirmation of your sentiments expressed in the House. My mind 'has long been distressed with the present law. I gladly embraced the 'first opportunity to do what I could for its mitigation, and lately took 'some pains in forwarding a petition from hence, praying that *in all 'cases* the penalty should be short of the forfeiture of life. The 'leading partners of the banks in this town signed, under the prac-'tical conviction that the severity of the law was not a protection 'to us, but tended to increase the crime. I also called on our prin-'cipal merchants, who concurred in the same sentiment, and signed 'it. *This opinion may be said to be universal in this district.*'

Legislative testimony in favour of mild Criminal Laws.

We recommend to all advocates for the preservation of the sanguinary principles of our Criminal Code, the perusal of the following sentiments contained in the statute of 1 Mary, cap. 1,—That the state of every King consists, more assuredly, in the love of the subject towards their Prince, than in the *dread of laws made with rigorous pains;* and that laws made for the preservation of the Commonwealth, *without great penalties,* are more often obeyed and kept, than laws made with *extreme punishments.*

These maxims, which deserve to be recorded in letters of gold, and to be conspicuously suspended on the walls of parliament for the instruction and admonition of our law-givers, were the production of an age when, in the opinion of our modern 'philosophers,' the 'march of intellect' had not begun, and of a reign that is stigmatized in history.

'Happy had it been for the nation,' says an able writer on the laws of England, 'if the subsequent acts of her reign, in matters of Religion, had been correspondent to those sentiments of herself and parliament in matters of State and Government.' Happy would it have been for the nation, we say, if our legislators had always kept those sentiments in view, and, in matters of penal enactment, had never deviated from the spirit of them! Then would a vast number of vindictive and merciless statutes, which have since disgraced the character, and tarnished the civilization of England, never have been passed. Then should we never have heard of forgery being visited with the punishment of murder; for all the statutes, numerous as they are, which make that offence a capital crime, have been enacted since the time those just and humane sentiments went forth to the world with the concurrent sanction of parliament and the throne!

It is well observed by Mr. Justice BLACKSTONE, that 'sanguinary laws are a bad symptom of the distemper of any state, or, at least, of its weak constitution.' The laws

of the Roman Kings, and the twelve tables of the *Decemviri*, were full of cruel punishments—the *Porcian law*, which exempted all citizens from the punishment of *death*, silently abrogated them all. *In this period the Republic flourished.* Under the Emperors severe punishments were revived, and *then the empire fell.* * * * * *—*Morning Herald, Monday, April* 12, 1830.

Capital Punishment no protection to the Banking Interests.

To-night the *law of forgery* is to come under discussion once more in the House of Commons. Our readers are aware that the argument principally relied on by the advocates for the continuance of the present sanguinary law, is the protection which, they allege, it affords to the commercial transactions of the country, and more especially to the banking interests.

On this argument the policy of the law has been defended, in opposition to those dictates of reason, humanity, and religion which teach us that punishment should never be vindictive, and that the sacred principle of justice should not degenerate into vengeance.

Long experience has clearly proved that the excessive severity of the law, instead of affording additional protection, counteracts the very object for which the distinctions of crime are disregarded, and the feelings of humanity outraged.

The great prevalence of the offence of forgery proves that the infliction of capital punishment has exactly the opposite tendency to that which the admirers of Draconic legislation anticipated. It has the effect of increasing instead of repressing a crime which, though it may be impossible to eradicate it by any law, would not be so frequent as it is, if the punishment were more proportionate to the moral guilt of the offence.

One of the greatest signs, we can perceive, of the advanced civilization of the age, is the increasing aversion

to the unnecessary shedding of blood by the sword of penal law.

We were always of opinion, and we frequently expressed it, that the banking interests were not protected, but severely injured, by the legislative cruelty which devoted the fraudulent imitator of a one-pound note to the death of a murderer! What with the disinclination of parties to prosecute, and the 'pious perjuries' of juries *—who sometimes think it a less crime to violate an oath, than to have the stain of human blood upon their consciences—the law of forgery seems especially devised to stimulate and encourage that class of offenders whom it professes to exterminate.

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* The following letter to the Editor of the *Morning Herald*, inserted April 22, 1830, furnishes a single illustration out of several that might be given.

'THE CRIMINAL LAW.

'MR. EDITOR,—I have for a long time been a humble, but 'warm admirer of your humane and strenuous efforts to mitigate 'the sanguinary principles of our criminal code, and of your con-'stant endeavours to press upon Mr. PEEL the *necessity of doing* '*away entirely* with capital punishment for forgery.

'I subjoin the following anecdote (not to mention many others 'which I might adduce) to prove that laws attended with too 'severe penalties, defeat their own object; and to urge strongly 'on the notice of the public the principles which you so ably 'advocate.

'Some years ago a man was tried at Carnarvon for forgery to 'a large amount on the Bank of England. The evidence was as 'satisfactory of the guilt of the prisoner as possible, and brought 'the charge clearly home to him. The Jury, however, acquitted 'him. The next day the same individual was tried on another 'indictment for forgery. Although the evidence in this case was 'as conclusive as in the former one, the Jury acquitted the 'prisoner. The Judge (Chief Baron RICHARDS), in addressing 'the prisoner, expressed himself in these remarkable words:— '"Prisoner at the bar—although you have been acquitted by a 'Jury of your countrymen of the crime of forgery, I am as con-

Of late, even the persons on whose behalf the necessity of excessive severity has been pleaded, have come forward in great numbers to pray the legislature to substitute a milder penalty for that of death. They know and feel its inefficacy. They find, from melancholy experience, that, instead of securing their property against this species of fraud, it exposes it to more extensive depredation.

It will be seen by a letter in our columns to-day, that about one hundred petitions have already been presented to the legislature calling for an amelioration of this law. A great proportion of bankers have signed petitions of this nature. The petition of Glasgow, to be presented to-night, has been signed by all the bankers—by all the magistrates to whom it was presented, and by the clergy of the Establishment, as well as Dissenters. It also bears the names of about six hundred most respectable merchants and manufacturers; and we know, by letters from that place, the general feeling among mercantile men is, that the 'severity of the law prevents its operation.' The petition from Newcastle-on-Tyne has been signed by all the bankers. So have the petitions from Sunderland, Darlington, Stockton,

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'vinced of your guilt as that two and two make four." A short 'time after the conclusion of the sessions I met with one of the 'Jurymen, and expressed to him my surprise at the acquittal 'of the man who had been tried for forgery. He immediately 'answered me in the following words:—"Neither my fellow-'jurymen nor myself had the least doubt of the prisoner's guilt; 'but we were unwilling to bring in a verdict of guilty, because we 'were aware the prisoner would have been punished with death—a 'penalty which we conceived to be too severe for the offence."

'Thus, in this case, in consequence of the too great severity, 'or, I might almost say, the inefficiency of our laws, a man, 'guilty no doubt of a heinous crime, was suffered not only to pass 'unpunished, but to be let loose on the public, to renew his frauds 'on society.

'I am, Mr. Editor, your obedient servant,

'*April 16.* 'Q. D.'

and Derby. Ten bankers affixed their names to the Chester petition. The petition from Yarmouth was signed by four bankers, twelve magistrates, and ten lawyers, and eighty merchants, ship-owners, and inhabitants, of respectability and intelligence. That from Truro had the names of seven bankers.

But why need we cite instances where they are so numerous, and the feeling out of which they arise, is so generally spreading over the kingdom?—*Morning Herald, Monday, April 26*, 1830.

Remarks on the postponement of the Discussion on the new Forgery Bill in the Commons.

It will be seen, from our parliamentary report, that the expected discussion on Mr. PEEL'S Forgery Bill was postponed, at the suggestion of Mr. BROUGHAM, and the second reading was afterwards fixed for Monday fortnight.

We think the Bill ought to be combated, in every step of its progress, by all those who are sincerely anxious for a vital and effective reform of the Criminal Law. The reason that Mr. BROUGHAM gave for wishing a postponement of the discussion, was to give the public an opportunity of stating their sentiments to the House, as petitions against the measure were expected from many parts of the country.

We were under the impression that public opinion had already declared itself in a very strong and decided manner on the subject, and that the parties supposed to be most interested in the perpetuation of the principle of capital punishment for forgery, had, in numerous instances, appealed to the legislature for its total abolition, not only on account of its inefficacy, but its positively injurious effects, by its tending to increase that species of depredation which it was intended to repress.

We were led into this supposition by observing that about a hundred petitions had already been presented to the

legislature for the removal of the sanguinary law from the Statute-book, while not a single petition had been produced on the other side. Surely, with these hundred petitions on the table, signed by great numbers of bankers, and the most respectable commercial people, as well as by clergymen, magistrates, and lawyers, the members who profess to advocate a reform of the law had sufficient evidence of the feeling of the country, to justify an immediate and energetic opposition to Mr. PEEL's Bill for the preservation of the old barbarous principle, in defiance of the conclusions of practical men, in contravention of the dictates of reason, sound policy, and religion, and in utter contempt of all enlightened public opinion.

It is true, we have heard, and have told our readers, that at this moment about a hundred petitions more are in progress relative to this question, all, like the former, declaratory of the sense which the country entertains of the cruelty and inefficiency of the existing law; but, that it was necessary to put off the discussion until those petitions shall have been received, we are not prepared to believe. Even Mr. BROUGHAM's own statement shewed that there was sufficient reason for at once and decidedly impugning the principle of Mr. PEEL's Bill, and resisting its further progress. If Mr. BROUGHAM be still convinced, as he once was, of the mischievous error of Mr. PEEL's legislation, he ought rather to have given the advantage of his eloquence to the exposure of that error, than avoided it; and he would thereby have stimulated the friends of civilized improvement throughout the country to greater exertions in the cause of humanity, and a rational reform of criminal justice.

He stated that—

'For some time certain classes, and particularly those who 'were chiefly interested in that branch to which the present law 'was applicable—he meant paper-money—were averse to any 'mitigation of the punishment. He had now the satisfaction of 'stating to the House that he had received communications and

'petitions from various bankers in different parts of the country, 'which shewed that, pretty generally, this class had reformed 'their opinion on the subject of capital punishment, and were 'willing to admit the error under which they had laboured. Within 'the last few days he had had a great deal of correspondence with 'persons connected with banking establishments. He had also a 'number of petitions to present—more particularly one—to which 'he would call the attention of the House, as it was from a part of 'the country where the trade in paper was chiefly carried on; and 'he found from those *bankers and merchants* that they were *anxious* '*to come forward* and *entreat* the legislature to pause before they 'enacted anew the punishment of death for forgery, because they 'viewed this mode of punishment not only as no protection, but 'quite the contrary. They regarded it rather as a means for pre-'venting prosecution and punishment, and as tending to the 'escape of persons who had been guilty of a serious offence.'

One would have thought, after this statement, that the learned gentleman had ample inducement for going into the debate at once, instead of cooling down the public feeling, by cautiously avoiding for the present a discussion that would probably have had the effect (as we have already intimated) of exciting the opponents of capital punishments to more animated and strenuous exertions.—*Morning Herald, Tuesday, April* 27, 1830.

Consideration of the Forgery Laws continued.

It is gratifying to every friend of humanity to find, that the public are becoming every day more and more convinced of the necessity of improving our Criminal Code.

We believe more meetings have been held, and more petitions presented, on this subject during the present session than at any former period: from the east to the west, from the north to the south, the feeling of repugnance and disgust towards the useless and barbarous frequency of capital punishments has been manifested; from every quarter the legislature has been called upon to efface from the Statute-book those cruel enactments which, though passed with the

view of repressing crime, are themselves criminal, confounding, as they do, all degrees of moral guilt, and violating the dictates of reason and religion.

The *dictum* of our Judges, since the days of Sir Matthew Hale, has been, that 'Christianity is part and parcel of the law of England;' but it is a bad compliment to the religion of mercy, to identify it with a system of law whose principle is not justice, but vengeance—whose end is not amendment, but extermination.

But the disgraceful errors of legislators are likely to be rectified by the corrective intelligence of public opinion:—the approaching discussion upon the law of forgery will shew what a moral force has arrayed itself against vicious legislation; it will shew how extensively prevalent among the well-informed and respectable classes of society the aversion to the unnecessary severity of our Criminal Laws has become. We have adverted before to many indications of this feeling, so creditable to the advancing civilization of the age.

We shewed that even the bankers—to protect whose interests especially the terrors of capital punishment were directed against forgery—had discovered, by the most instructive of all teachers, the inefficiency of a principle of punishment, which so far exceeded the offence as to deter the greater number of those who suffered by this species of fraud, from prosecuting the offenders.

Most of the petitions which have yet been laid on the tables of parliament, have the names of bankers attached to them; but the most important one, perhaps, is that from Edinburgh, which has lately been signed by about 700 persons, all respectable, as many signatures were declined which it was thought would not add weight to the document. Among the names are those of 18 bankers, 14 clergymen, 4 magistrates, 48 professors of the University, doctors of medicine, and surgeons, 11 advocates, 34 writers to the signet, 10 insurance and other agents, and the remainder private gentle-

men, merchants, and traders.—*Morning Herald, Tuesday, May 4*, 1830.

Petition from Edinburgh against the Punishment of Death.

It will be seen that the Edinburgh petition, praying for abolition of death in cases of forgery, was presented to the House of Commons last night by Sir James MACKINTOSH. This is the petition to which we have before adverted, as being signed by about 700 persons of respectability, being all either bankers, merchants, magistrates, private gentlemen, or members of the Universities and learned professions. *All the bankers* in Edinburgh, we are informed, signed it; and they declared, as Sir James MACKINTOSH stated, that, from the result of their experience, under the present severity of the law, they had much less security against the crime, whose suppression was of so much importance to them, than they would possess under a milder code.

This fully bears out what we stated yesterday respecting the sentiments of the bankers on the sanguinary law of forgery.

Sir James also observed, in contradiction to what had been asserted by Sir Robert PEEL before, touching the danger of proceeding further in the work of legal reform than public opinion warranted, that the number of petitions which had been poured into the House on this subject, and the character of the persons by whom they were signed, shewed that the *country was ripe* for the abolition of the punishment of death in cases of forgery. So we say; and we can assure Mr. Spring RICE that he need not be in the least afraid, even if his Right Hon. Friend the Home Secretary adapted his Bill to the prayer of the Edinburgh petition to-morrow, that he would thereby '*outrun public opinion.*'—*Morning Herald, Friday, May* 14, 1830.

Petition of Mr. ROTHSCHILD—*of Messrs.* OVEREND, GURNEY, *& Co.—and of Messrs.* SANDERSON *& Co.,—for the abolition of the capital Law of Forgery.*

It will be seen, from our parliamentary report, that a most important petition, praying for the abolition of the punishment of death for forgery, was last night presented by Mr. John SMITH to the House of Commons.—The Hon. Member stated that it was from three individuals, whose names and character need but be named, to be known as among the highest in the commercial world.

The first name was that of Mr. ROTHSCHILD, whom he described as the greatest merchant in the world, and one through whose hands more bills of exchange passed than through those of any twenty firms in London. The second was that of the firm of OVEREND, GURNEY, & Co., through whose hands Bills of Exchange to the amount of 30 millions passed last year; and the third was that of Mr. SANDERSON, a bill-broker, and also a Member of the House.

After this we hope we shall hear no more of the cruel and disgraceful old law of forgery being preserved, in compliance with the wishes of commercial men, and for the purpose of affording protection to the property of bankers.

We trust Sir Robert PEEL will now be satisfied that, to retain the punishment of death in cases of forgery of negotiable securities for money, as he proposes to do by his new Bill, can only do violence to the feelings, and injury to the interests, of those very persons for whose advantage he represents the barbarous enactment as especially intended.

We understand that Mr. ROTHSCHILD, as well as many others, has had to bear with many losses, rather than be instrumental to the shedding of human blood by prosecuting the offenders to conviction. This is as creditable to his character as it is disgraceful to the existing law. We have heard of one house that some time ago put up with a similar loss of £5,000, rather than prosecute. Thus injurious is the law to the interests of bankers!

It will be seen that three other petitions of great importance on this question were presented last night, concurring in the necessity of abolishing the punishment of death:—the one by Sir John NEWPORT, from the Directors of the Provincial Bank of Waterford; the other by Mr. S. RICE, from the Directors of the Provincial Bank of Limerick: and the third by Mr. LATOUCHE, from the Directors of the Provincial Bank of Sligo. The Hon. Members by whom those petitions were presented, advocated their principle, and concurred in expressing their opinion that the existing law was detrimental to the banking interest, by tending to increase, rather than diminish, the crime of forgery.—*Morning Herald, Saturday, May* 15, 1830.

Letter from Mr. SPARKES, *Banker, to* Sir Robert PEEL, *on the Forgery Laws.*

We direct the attention of our readers to the copy of a letter which will be found in another part of our paper, addressed to the Secretary of State for the Home Department by Mr. SPARKES, a banker, relative to the law of forgery.

This document, which is evidently the production of a mind of superior intelligence, is particularly important, as coming from one of those individuals who are personally interested in a question involving the security of banking property.

The advocates of the present exterminating law, when beaten, as we before observed, on every consideration of reason, religion, and humanity, have always taken up their last position on the ground of *commercial necessity*, and entrenched themselves behind the banking interests. But from that very position the *bankers themselves* dislodge them:—they represent the law which inflicts death upon the forger, as not only not affording the highest protection to their property, but as being almost wholly ineffectual and *inoperative.*

They have stated, in various petitions presented to the legislature during the present session, that the severity of the law deters many from prosecuting; and the impunity which a great proportion of the offenders thereby enjoy, multiplies the crime.

But what does Mr. SPARKES say, who has more at stake in this matter than Sir Robert PEEL, and whose reasoning is not from theory, but experience? Let us hear his own words:—

'Being concerned in a large banking establishment, and 'entertaining, as I do, a settled conviction that, if I were to be 'instrumental, either as prosecutor or witness, in taking the life 'of a fellow-creature for a forgery, I should incur a degree 'of guilt not inferior to that of the forger himself, it is evident 'that, as my principles, and those of my partners, in this respect 'are well known, our property becomes exposed, and is every day 'liable to the depredations of the forger, to any extent that may 'chance to escape the timely discovery of ourselves or our clerks.'

And again this gentleman observes:—

'Cases of forgery are *frequently* coming under the notice of 'the concern in which I am engaged, either through our customers 'or in a more direct way; and for a series of years the almost '*universal* language on these occasions has been—not only of our-'selves, but of our connections also—"We *cannot* take away *life*; we 'can therefore do *nothing*—the criminal must remain *unmolested*."*

* Mr. SPARKES goes on to say—'Since the Bill was brought in, 'I have made it my particular business to ascertain the opinion of 'a large number of persons of different descriptions, but mostly '*Bankers and Attorneys-at-Law*—indeed, I have visited town after 'town, not confining myself to this large county—and I do aver, 'without fear of contradiction, that, generally speaking, it appears 'to be a *rule*, not only with my brother-bankers, but with the '*public at large*, *not to prosecute* for the crime of forgery. I do not 'say there are *no* exceptions, but I *do* say they are so few, that 'they cannot fairly be taken into account. Can this be a state of 'things that ought to be suffered to continue? Ought the property 'of the commercial world to be left thus unprotected, *owing* to 'the law being, in point of fact, nearly nominal?

'It is so generally known that the law, in consequence of its

Such is the vaunted protection which is afforded to the banking interests by a law which outrages reason, con-

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'severity, is usually not resorted to in cases of forgery, that it 'might seem needless to adduce any instances in proof of the 'fact; a part of those that came to my knowledge, unsought for, 'in my late tour, shall however be named.

'A solicitor informed me that a man, after dining at his house, 'prevailed on him (the solicitor) to discount a bill, which after-'wards proved to be a forgery. The solicitor remarked to me—"Of 'course I could not think of hanging the man."

'A banker said that his name had been forged as the acceptor 'of a bill of exchange; and that, recollecting the severity of the 'law, rather than divulge the circumstance, he *acknowledged the* '*acceptance to be his*, and *paid the money*.

'At another place, a banking firm intimated that they might 'be somewhat like *continually* prosecuting for the crime of *forgery*; 'but that, owing to the law attaching to the offence the punish-'ment of *death*, they never for a moment entertained the idea 'of resorting to it.

'A solicitor (who is also a Banker) stated that some years 'since, in a case of forgery, he indicted the man for the *minor* 'offence—that the Judge at the trial, *perceiving* the contrivance, 'reprimanded the solicitor in open Court, and caused the prisoner 'to be kept in custody, to be tried for the *capital* offence at the 'following assizes; but the prosecutor would *not* be instrumental 'to depriving the offender of *life*, and an *acquittal* was successfully '*contrived*.

'It may be specially noted, that this strong disapprobation 'of the punishment of *death* for the crime of forgery is not confined 'to this or that set of men—to the professors of these or those 'religious or political opinions; but the general voice of *all* de-'scriptions declares, "We *cannot* take away *life*: the forger must 'therefore be silently suffered to pursue, unrestrained, his ini-'quitous career."

'Neither must it be supposed that it is the *expence* that 'deters the injured parties from prosecuting. We see that *other* 'violators of the law are not, by those they injure, so suffered to 'escape. Indeed, I am acquainted with individuals who bestow 'both money and time in bringing delinquents to justice, even in

founds the degrees of moral guilt, and reflects disgrace on a civilized people! Excessive punishments always counteract their own object: intemperate legislation is always ineffective in proportion to its violence.—*Morning Herald, Thursday, May* 20, 1830.

Petition from upwards of ONE THOUSAND BANKERS, *presented to the House of Commons by Mr.* BROUGHAM, *for a mitigation of the Forgery Law.—Debate in Committee.*

Mr. BROUGHAM presented a petition to the House of Commons last night, of great importance, praying for the *abolition of capital punishment in all cases of Forgery.* It was a petition signed by *bankers,* and by bankers *only,* of no fewer than 214 cities and town of the United Kingdom.*

The signatures consisted of the names of 233 banking

'cases where they are not directly interested, provided the *life* 'of the offender be not placed in jeopardy; but who at other 'times (*i. e.* when the crime is punishable with death,) make the 'like sacrifices to rescue the prisoner. They have, to my know-'ledge, in several instances, had in actual custody most villanous 'characters, who they *knew* had committed forgeries *to the amount* '*of thousands;* but the parties I allude to, have been, owing to 'the severity of the law, from time to time compelled, though with 'the *greatest reluctance,* to release these abandoned offenders; who, 'thus restrained, have, in more than one instance, renewed their 'diabolical practices. So that here are persons giving proof of 'their *wish* to assist in the due execution of the law, but who 'are, notwithstanding, frequently obliged to aid the depraved in 'escaping.'

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* The petition was as follows:—

'TO THE HONOURABLE THE COMMONS OF THE UNITED KING-'DOM OF GREAT BRITAIN AND IRELAND, IN PARLIAMENT 'ASSEMBLED,

'*The Petition of the undersigned* BANKERS, *established in the Cities* '*and Towns of*—

'Edinburgh, Dublin, Glasgow, Manchester, Liverpool, Ches-'ter, Belfast, Birmingham, Lichfield, Wednesbury, Bilston, Dudley, 'Wolverhampton, Bristol, Bath, Leith, Huddersfield, Mirfield,

firms, 36 joint-stock banking companies, and 502 individual bankers—being in all 771 signatures.

This shews, beyond all question, how decidedly the

' Wakefield, Dewsbury, Leeds, Plymouth, Devonport, Tavistock,
' Portsmouth, Norwich, Sheffield, Rotherham, Nottingham, Sun-
' derland, Newcastle-on-Tyne, Durham, Darlington, Stockton,
' Richmond, Leyburn, Ripon, Knaresborough, Boroughbridge,
' Thirsk, Aberdeen, Paisley, Tiverton, Collumpton, Honiton, Barn-
' staple, Ilfracombe, Bideford, Torrington, Totness, Newton-
' Abbott, Exeter, York, Yarmouth, Beccles, Stockport, Wigan,
' Worcester, Needham-Market, Woodbridge, Hadleigh, Manning-
' tree, Shipston, Evesham, Ipswich, Banbury, Bicester, Oxford,
' Carlisle, Brighton, Lewes, Reading, Maidenhead, Henley, Wind-
' sor, Lynn-Regis, Canterbury, Lancaster, Chelmsford, Winchester,
' Kendal, Southampton, Bury St. Edmund's, Guilford, Chippen-
' ham, Salisbury, Ringwood, Poole, Bradford, Halifax, Wakefield,
' Pontefract, Doncaster, Barnsley, Derby, Inverness, Burton-on-
' Trent, Leighton-Buzzard, Newport-Pagnel, Burslem, Hitchin,
' Bedford, Newbury, Abingdon, Wallingford, Uxbridge, Faring-
' don, Wisbech, Truro, Falmouth, Penzance, Helston, Penrith,
' Kirby-Thuce, Workington, Chesterfield, Teignmouth, Kings-
' bridge, Dartmouth, Bridport, Yeovil, Dorchester, Blandford,
' Harwich, Saffron-Walden, Tewkesbury, Cheltenham, Cirencester,
' Tetbury, Burford, Dursley, Romsey, Basingstoke, Odiham, Here-
' ford, Ross, Stroud, Dickenfield, Leominster, Ledbury, Royston,
' Hemel-Hempstead, Gloucester, Dartford, Ramsgate, Margate,
' Deal, Boston, Spalding, Louth, Spilsby, Horncastle, Staines,
' Newport (Monmouthshire), Monmouth, Chepstow, Diss, North-
' ampton, Towcester, Wellingborough, Stroud, Daventry, Wellington
' (Salop), Shiffnal, Coalbrookdale, Bridgenorth, Wenlock, Trow-
' bridge, Wells, Frome, Wiveliscombe, Wellington, (Somerset-
' shire), Taunton, Leek, Congleton, Rye, Halesworth, Sudbury,
' Stowmarket, Reigate, Croydon, Dorking, Hastings, Kirby-Lons-
' dale, Swindon, Malmesbury, Settle, Marlborough, Melksham,
' Devizes, Stourbridge, Skipton, Selby, Malton, Howden, Scar-
' borough, Whitby, Pontypool, Abergavenny, Brecon, Carmarthen,
' Swansea, Neath, Haverfordwest, Buckingham, Andover; Annan,
' Auchtermuchty, Cupar, Dumbarton, Elgin, Forfar, Galashiels,
' Jedburgh, Kirkcaldy, and Wigtoun (Scotland)—

' *Sheweth,—That your petitioners, as* BANKERS, *are deeply inte-*

bankers in general throughout the nation are convinced of the inefficiency of the existing law, and how much they hold in abhorrence those periodical sacrifices of human life, which, under the pretence of especially protecting their property, exhibit only the sad spectacle of human blood unprofitably shed.

Mr. BROUGHAM* stated, on the calculation of 3½ as the

'*rested in the protection of property from* FORGERY, *and in the con-*
'*viction and punishment of persons guilty of that crime.*

'*That your petitioners find, by* EXPERIENCE, *that the infliction*
'*of* DEATH, *or even the possibility of the infliction of death,* PRE-
'VENTS *the prosecution, conviction, and punishment of the criminal,*
'*and thus* ENDANGERS *the property which it is intended to protect.*

'*That your petitioners therefore earnestly pray that your Honour-*
'*able House will not withhold from them that protection to their*
'*property which they would derive from a more lenient law.*'

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* *Substance of* Mr. BROUGHAM'S *remarks, as reported in the Morning Herald:—*

'HOUSE OF COMMONS—*Forgery—Bankers' Petition.*

'Mr. BROUGHAM then rose to present a petition on the same
'subject, which he had postponed on a former night. From the
'peculiar importance of *this* petition, he felt justified in calling the
'especial attention of the House to it;—and he did not overrate
'its importance, when he said that, from its nature, and from
'the number and character of those who had signed it, it ought
'to be received as a final decision of this question. When he
'should have mentioned the parties, and the substance of the peti-
'tion, he was sure that it would be viewed as a fact which spoke
'strongly against the expediency of continuing the present law.
'The petition was signed by bankers—by none but bankers, *of no*
'*fewer than* 214 *cities and towns* in the United Kingdom—(*hear,*
'*hear.*) It was signed by 725 firms, or individual members of
'banking firms, and directors of joint-stock, and other banking
'companies. He allowed the average of three and a half, (which
'was the general average,) as the number of members composing a
'firm. Now here were 233 firms, and the average of three and a
'half would give 815 as belonging to firms; then taking those who
'signed as individuals, the whole of those engaged in banking,

average number of members composing a firm, the whole of those engaged in banking who signed, either themselves or by individuals of the firms with which they were connected, were upwards of *one thousand.* He said there had been already 145 petitions on the same subject presented by

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' who signed, either themselves, or by individuals of the firms with ' which they were connected, were upwards of 1,000. The country ' bankers of England were computed at from 2,000 to 2,400. He ' did not say the whole, but more than the half of these had signed ' petitions. Some of the bankers had not signed, alleging that ' they were junior members of their firms; and, as the senior mem- ' bers had declined signing, the junior members declined, out of ' delicacy to them. A great number of others did not sign, because ' they had already signed *other* petitions to the same effect in other ' capacities. There were already 145 petitions from mixed bodies; ' and there were for presentation to-night as many as would make ' in all, 200 petitions. Of these petitioners the bankers formed a part. ' Others who had refused to sign, were influenced by other motives: ' they said that the case was so strong—so many petitions from ' bankers had already been presented—that they considered it un- ' necessary to add their individual testimony. There were only a few ' instances in which any counter opinion had been expressed; and he ' considered it decisive upon the question, that *not one* petition had ' been presented, either from an individual banker, or a body, ' praying for the *continuation* of the punishment of death—(*hear,* ' *hear.*) The bankers of London were not comprehended in this ' petition, one or two of them, who generally gave their tone to the ' others, having declined; but he believed that the majority of them ' would be found not to entertain the same prejudices in favour of ' the continuance of the present system. The Bank of England ' had declined also. He was happy to learn that his Hon. Friend ' the Member for Limerick had petitions to present, from which ' it would be found that the bankers of Ireland were unanimous ' upon this subject. As there would be an opportunity in the ' course of the evening of discussing the question fully, he should ' abstain from entering into it more at large, having stated its ' nature, in order to shew the great weight which was due to it. ' He considered it a fact decisive of the case, as it removed the ' only remaining objection to a change of the law—the objections ' founded on principle having been already removed by argument.

mixed bodies of bankers, merchants, clergymen, magistrates, members of the learned professions, and others, and there were for presentation that night as many as would make 200 petitions.

In the Committee on the Forgery Bill, Sir James MACKINTOSH moved a clause in conformity with the prayer of the petitions for abolishing the penalty of death. This produced an animated and highly interesting debate. The speech of Mr. BROUGHAM was splendid, impressive, and unanswerable. The Hon. and Learned Gentleman seemed to put forth all his powers in furtherance of the great task of justice and humanity which he had undertaken. The sentiments which he advocated were worthy of the eloquence with which they were enforced.

The question was lost by 128 members out of 241, the whole number present voting against it—the minority being 113.

When we consider the number of members whom the influence of Ministers causes to vote with the Government, we must consider this result a moral victory, although a parliamentary defeat. It ought, instead of depressing, to stimulate and encourage the friends of humanity, justice, and civilization to new exertions.

Only 16 independent members who were absent on this occasion—but who ought to have been at their posts, and whom their constituents, no doubt, expected to hear of being at their posts—would have turned the scale of this battle of reason against prejudice, of civilization against barbarism.

We understand that Mr. F. BUXTON proposes to take the sense of the House on the same clause on the bringing up of the Report.

We have little doubt of the final triumph of the principles which, in common with all intelligent and humane persons in this country, we advocate; but we wish that triumph to be soon—that the spirit of the Statute-book may no longer be set in disgraceful hostility against enlightened opinion.—*Morning Herald, Tuesday, May* 25, 1830.

Petitions against the punishment of death for Forgery, presented in the course of eleven weeks.

In alluding to the petitions on this subject, in the list which we publish to-day, we ought not to omit stating that their number, namely 200, is equal to one-fourth of all the petitions on public questions which have been presented to parliament during the same period; the whole number being not more than 800, notwithstanding the excitement raised respecting the East India question, and some other subjects of public and national interest. This affords the most convincing testimony of the prevalence and power of public opinion on this question, and the general and deep interest which the country takes in the amelioration of the sanguinary spirit of the law of forgery.—*Morn. Herald, May 26,* 1830.

List, extracted from the Votes and Proceedings of the House of Commons.

When presented.	Printed, See App^{x} N^{o}.	PLACES, &c.*
1830,		
March 12	235	Stockton.
15	246	Southampton.
16	279	Falmouth.
..	280	Cirencester.
17		Colchester.
..	288	Poole.
..	289	Plymouth.
..	290	Hull.
..	291	Malton.
..	292	Norwich.
18	303	Chelmsford.
..	304	Newcastle-on-Tyne.
..	305	Lewes.
..	306	Carlisle.
..	307	Sunderland.
..	308	Darlington.
19	320	Wellingborough.
..	321	Bury St. Edmunds.
22	333	Rochdale.
..	334	Ireland (Quakers of)
..	335	North Shields.

* In the list will be found some places mentioned a *second* time. Those are places which petitioned for an amelioration of the law of Forgery in the first instance; and which, subsequently to the introduction of Sir R. PEEL'S Bill, sent up petitions against it in the nature of remonstrances.—*Morning Herald.*

When presented.	Appendix N°.	PLACES, &c.
May 23	355	Birmingham.
..	356	Chepping Wycombe.
25		Finsbury Protestant Dissenters.
..	368	Bridport.
26		None presented.
29	387	Exeter.
..	388	Madeley.
30	392	West Bromwich.
..	393	Coventry.
..	394	Banbury.
..	395	Derby.
31	401	Wisbech.
April 2		Truro.
..		Hoddesdon.
5		Alan Newman.
..	415	Bristol.
..	416	Maidenhead.
..	417	Braintree and Bocking.
..	418	Warrington.
6	438	Woburn.
..	439	So.-place Chapel, Finsbury (Prot. Diss.)
7		Chipping Norton.
..		Kelvedon.
8	462	Woodbridge.
..	463	Tower Liberty, London.
..	464	Portsmouth and Portsea.
..	465	Witham.
Recess.		
April 26		Cirencester.
..		Leek.
..		Axbridge.
..		Royston.
..		Worcester.
..	471	Derby.
..	472	Kingston-on-Thames.
..	473	Plymouth (second Petition, see note* p. 4
..	474	Bolton.
..	475	Exeter.
..	476	Walworth (Beresford-st. Chapel, Prot. Dis
..	477	Uxbridge.
..	478	Newington Butts.
..	479	Lambeth.
..	480	Kettering.
..	481	Bishopsgate Ward.
..	482	Earith (Hunts.)
..	483	Boston.
..	484	Yarmouth.
27		Sudbury.
..	515	Luton.
..	516	Walworth (York-st. Chapel, Prot. Diss.
..	517	Poole (second Petition.)
..	518	Bath.

When presented.	Appendix N°.	PLACES, &c.
April 27	519	York.
..	520	Reigate.
..	521	Madeley (Salop) (second Petition.)
..	522	Maidenhead (second Petition.)
28	540	Spratton and Creaton.
29		Uxbridge (second Petition,)
..	548	Durham.
..	549	Appleby.
30		Saffron Walden, Bankers.
..		Ditto, other Inhabitants.
..		Braintree and Bocking (second Petition.)
..	564	Wandsworth.
..	565	Leeds.
..	566	Newport (Monmouthshire.)
May 3		North Shields (second Petition.)
..	616	Stroud.
..	617	Nailsworth.
..	618	Leominster.
4		Liverpool.
..	673	Great Bardfield.
..	674	Kelvedon (second Petition.)
..	675	Darlington (second Petition.)
..	675	Kirkby Kendal.
..	675	Kingsbridge.
6		Shaftesbury.
..		Henley.
..	711	Godalming.
..	712	Doncaster.
..	713	Hayworth.
..	714	Doncaster.
10	754	Manchester and Salford.
..	755	Nottingham.
..	756	Gloucester.
11	778	Sheffield.
..	779	Reading.
..	780	Huddersfield.
12		Malmesbury.
..		Sutton and Mepal (Isle of Ely.)
..		Stourbridge.
..		South-street Chapel, Exeter (Prot. Diss.)
..		Milford.
..		Counterslip Chapel, Bristol (Prot. Diss.)
..		Dorking.
..	839	Ashburton.
..	840	Falmouth (second Petition.)
..	841	Provincial Bank of Ireland at Clonmel.
..	842	Swansea.
..	843	Sunderland, Bishop Wearmouth, and Monk Wearmouth.
13		South Brent.
..		Winscombe.
..		Moreton-Hampstead.

When presented.	Appendix N°.	PLACES, &c.
May 13		Collumpton.
..	873	Edinburgh and Leith.
..	874	Provincial Bank of Ireland at Belfast.
..	875	Tavistock.
14		King's Lynn.
..		Hawick (the Chief Magistrate of the Burgh of.)
..		Provincial Bank of Ireland at Cork.
..		N. M. Rothschild; Overend, Gurney, Co.; and Sanderson & Co.
..	890	Provincial Bank of Ireland at Limerick
..	890	Ditto at Sligo.
17	939	Manchester Chamber of Commerce.
..	940	Leicester.
18	945	Evesham.
..	946	Exeter, Congregation at Castle-st.Chap
..	947	Ipswich.
..	948	Margate.
..	949	Ashford.
..	950	Tewkesbury.
19		Chudleigh.
..		Teignmouth.
..		Provincial Bank of Ireland at Kilkenny
..	966	Leeds.
..	967	Provincial Bank of Ireland at Galway.
..	967	Ditto at Coleraine.
..	967	Ditto at Ballina.
..	967	Ditto at Armagh.
20	987	Shaftesbury.
24		Richard Payne, Grosvenor-square.
..		Redruth.
..		Protestant Dissenters, Salford.
..		Modbury.
..		Basingstoke.
..		Rochdale.
..		Faringdon.
..		William Alexander, Great Yarmouth.
..		Clonmel.
..		Congregation, Hornton-street Chapel.
..		Lewisham-street Chapel, Westminster.
..		Nottingham (two Petitions.)
..		Reigate, Dorking, and other Places.
..		Merchants and Tradesmen of London a
..		Westminster.
..		Chudleigh.
..	1007	Glastonbury.
..	1008	Local Directors of Prov. Bank of Athlo
..	1009	Crediton.
..	1010	Chesham.
..	1011	Canterbury.
..	1012	Camberwell.
..	1013	Magistrates, Clergy, Bankers, Merchan and Manufacturers of Glasgow.

When presented.	Appendix No.	PLACES, &c.
May 24	1014	Congregation of St. Mary Axe.
..	1015	Protestant Dissenters, Salford.
..	1016	Newport, Isle of Wight.
..	1017	Stockton-upon-Tees.
..	1018	Wakefield.
..	1019	Two petitions, district of Craven (York.)
..	1020	Reading
..	1021	Haverhill.
..	1022	Spalding.
..	1023	Baptist denomination, Broadmead, Bristol.
..	1024	Horsham.
..	1025	Kirkby Kendal (second Petition.)
..	1026	Halsted.
..	1027	Woburn.
..	1028	Faringdon (second Petition.)
..	1029	Quakers, Stockport and Macclesfield.
..	1030	Maldon.
..	1031	Maldon (second Petition.)
..	1032	Coggeshall.
..	1033	Coggeshall (second Petition.)
..	1034	Wellington.
..	1035	Quakers, Manchester.
..	1036	Halsted (second Petition.)
..	1037	Charlbury.
..	1038	Protestant Dissenters of Exeter.
..	1039	Neath.
..	1040	Bridgwater.

In all, 200 petitions, besides the general petition of above 1000 Bankers, established in 214 cities and towns of the United Kingdom.

The Common Council of London, with only two dissentient votes, resolve on petitioning the legislature for a revision of the Penal Laws.

It will be seen, by a report in another part of our columns, that a Court of Common Council was held yesterday, to take into consideration the present state of the laws inflicting the penalty of death on offences exclusively relating to property, and to consider the propriety of presenting petitions to both Houses of Parliament, to *remove from the statutes the punishment of death* for crimes *against property*, unattended with murder or personal violence, on the ground that it deters prosecutors from enforcing the laws against offenders, and thus operates to increase crime.

In discussing this question, Mr. Wood* very justly observed, that 'it had been proved that mild punishments, which did not offend the natural feelings of mankind, were more certain in the execution, and by that certainty operated more efficiently in prevention, than punishments of a sanguinary character.' Several other speakers addressed the assembly on the same side; but we would particularly call attention to the sentiments delivered by Mr. Harmer,† whose great experience, as a criminal lawyer, gives peculiar value to his opinion upon this important question—a question involving the security of property, the interests of justice, and the life of man. This gentleman observed, he 'could state confidently that these punishments, which were upheld for the purpose of protecting property, tended to *encourage crime*, and render *property insecure*. He could declare that the cases prosecuted, or in which any proceedings whatever were taken, bore *no proportion to the cases in which no prosecution took place*. He could produce a thousand cases in which the prosecutors—the witnesses—the Jury—and not unfrequently the Judge, conspired to defeat the law, and save a culprit from the punishment which it was an outrage to their feelings to execute.'

These are the sentiments, not of a theorist, indulging his benevolent speculations without any light, from experience, to inform and guide him, but of a practical man, who has had ample opportunity to observe the working of the system on which he animadverts, and to know, by the best of all evidence, that its excessive and revolting severity is less a terror to offenders than an indemnity to crime. Such must ever be the effect of laws framed upon vindictive notions of punishment, instead of the sound, reflecting, and dispassionate policy of rational justice.

Under such laws witnesses will be reluctant to give evidence, Judges will often be disinclined to enforce the testi-

* Afterwards Alderman (Thomas) Wood.

† Afterwards Alderman, and one of the Sheriffs of London.

mony that would lead to conviction, and juries will not unfrequently prefer to charge their consciences with "pious perjuries," rather than take the stain of human blood upon their souls. This comes of investing Justice with the attributes of Vengeance, and thereby enlisting the sympathies of mankind on the side of the offender. Nothing can be more injurious to the interests of society than this.

The odious character of crime is lessened in the eyes of the multitude in proportion as the reverence for the law is diminished; and laws can never be popularly respected, that confound the degrees of moral guilt, and are more ferocious than just. Such is the character of the criminal laws of England. Men's feelings revolt at their cruelty; public opinion is arrayed against them. The conviction of their injustice and inefficiency is so general, that the resolution proposed in the Common Council was carried with *only two* dissentient votes; and petitions to the same effect were voted to both Houses of the Legislature.—*Morning Herald, Saturday, May* 29, 1830.

Anticipated discussion on the Third Reading of the new Forgery Bill in the Commons, when the division was expected.

The discussion on the third reading of the Forgery Bill is expected to take place to-night in the House of Commons. It will then be decided whether this portion of penal law, like the great mass of our criminal code, is to remain for some time longer the reproach and scandal of the country and of the age, or whether it is to come forth from the revision of the legislature purified from barbarism, and rendered conformable to the principles of enlightened justice.

To those who look on such reform as an innovation upon our ancient laws we say, antiquity may render good principles the more venerable, but ought not to consecrate the errors of legislators, and the abuses of power. Yet the argument of antiquity does not avail this branch of our criminal code.

Every statute by which death is inflicted for that species of circumvention known by the name of forgery, is comparatively of recent date. The COMMON or ancient LAW of England punished the offence by fine and imprisonment.* * *

Never will it be reconciled to the feelings of the people of a civilized country, that fraud and murder should be visited with equal punishment. The reformation of our criminal law has long been the object of the enlightened solicitude of the greatest and best of our lawyers, our jurists, and legislators. In this field, where so rich a harvest of moral glory is to be reaped, such men as ROMILLY and MACKINTOSH laboured in vain; not, indeed, for their own reputation—the laurels of humanity, unlike those of war, have a charm independent of the lustre of success: but they laboured in vain as to any immediate practical purpose which genius and public virtue ought to achieve. * * * * * * * *

We ask Sir Robert PEEL whether he can reconcile it to his conscience or his feelings, to perpetuate the revolting scenes of human sacrifice which it was once thought the idol Mammon imperatively required, when he is informed, on the best possible evidence, that the oblations of blood are not acceptable?

Let him, when he strives for victory on a question in which human life is at stake, only reflect for an instant on the ensanguined laurels which a triumph in such a cause can produce. Let him figure to himself the apparatus of death; the dreadful solemnities which precede the judicial extermination of a fellow-creature; and the pale criminal brought forth to meet his fate amid the deep murmurs of the spectators—the object of the commiseration and sympathy of the multitude! Let him then think of the mourning widow, and the children made fatherless—no place, no opportunity, left to him, who has injured his fellow-creature by written fraud, for repentance, amendment, or restitution! Let him reflect on how many have fallen in this way, without any advantage accruing to society from the sanguinary

spectacles resulting from a law which violates reason, and, in defiance of Christian sentiment, and judicial morality, inflicts upon the fraudulent imitator of a promissory-note the death of the murderer! Let him also imagine to himself the numbers that may yet perish in this way, should his Bill, at present before Parliament, pass into a law. Let him think on the doom of those future victims to an unjust law; a law which is 'part and parcel' of what he has himself called the 'most sanguinary code in Europe.' Let him think of these victims, we say, whom his law may exterminate in his lifetime, and when his ashes are reposing in the grave; and, if he ever again makes this a Government question, let him ask his heart if he is prepared to say—'their blood be upon me and my children!'

We now leave this subject. We have enforced the sentiments for which we now contend, in times and seasons when the prospect of success was more remote than it appears to be at present. We have abided by them through evil report and through good report. We have had the satisfaction of seeing the impulse given to public opinion, which will yet clear away every obstacle opposed to the establishment of an enlightened system of justice; and, in retiring from this responsible situation, as we do this day, we quit a post from which the influence of opinion is carried to the utmost limits of the empire, with the confident anticipation of the eventual triumph of the principles which we invariably advocated, having had no object but what was identified with the public cause, and conducive to the interests of morality and civilization.*—*Morning Herald, Monday, June 7,* 1830.

* *Tuesday Morning, June* 8.—Our readers will perceive in our report of the parliamentary proceedings, that the amendment proposed by Sir James MACKINTOSH, which (excepting wills) does away with the punishment of *death* for forgery, WAS CARRIED by a majority of 13, at a late hour last night. When it is considered that the Ministers, so far from being taken by surprise upon this

Anticipated discussion on the Second Reading in the Lords.

This evening is fixed for the second reading of the Forgery Bill in the House of Lords, when it is understood

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occasion, had received a pretty plain intimation, but a few nights before, of the great change which had taken place in the minds of men upon this subject, and had, in consequence, *marshalled all their forces* to meet the struggle of last night, (see list of *Minority*, p. 53), it is impossible to regard the result in any other sense than as a decisive triumph on the part of the friends of humanity.—*Morning Herald.*

LIST of the MAJORITY of 151, who voted on Monday, the 7th of June, 1830, *for* abolishing the PUNISHMENT of DEATH in all cases of FORGERY, except the Forgery of Wills.

Acland, Sir T. D., Bart.
Anson, Sir George
Baring, Sir T., Bart.
Baring, Francis
Batley, Charles H.
Barclay, Charles
Barclay, David
Bell, Matthew
Benett, John
Bentinck, Lord George
Bernal, Ralph
Blake, Sir F., Bart.
Bramston, Thomas G.
Brougham, Henry
Brougham, James
Brownlow, Charles
Buck, Lewis W.
Buller, Charles.
Calvert, Nich.
Calthorpe, Hon. F. G.
Canning, Right Hon. S.
Callaghan, Daniel
Cavendish, Hon. F. C.
Cavendish, William
Cave, R. Otway
Carter, John B.
Cholmeley, Montague J.
Clifton, Lord
Clive, Edward B.
Corbett, Panton
Colborne, N. W. R.
Curteis, Edward J.
Davies, Colonel T. H.
Dawson, Alexander
Dickinson, William
Denison, J. E.
Duncombe, Hon. W.
Duncombe, Thos. S.
Dundas, Hon. Thomas
Dundas, Hon. Sir R.
Easthope, John
Ebrington, Viscount
Ellison, Cuthbert
Evans, Col. De Lacy
Ewart, William
Fazakerly, John N.
Fergusson, Robert C.
Forbes, John
Fortescue, Hon. G.
French, Arthur
Frankland, Robert
Fyler, Thomas B.
Graham, Sir James
Grant, Right Hon. C.
Grant, Robert
Grattan, Henry
Grattan, James
Guise, Sir B. W. B.
Gurney, Hudson
Gye, Frederick
Hancock, Richard
Harvey, D. W.
Heneage, George F.
Horton, Rt. Hon. R. W.
Honeywood, William P.
Huskisson, Rt. Hon. W.
Hume, Joseph
Jephson, C. D. O.
Kekewich, S. T.
Kemp, Thomas R.
Kennedy, Thomas F.
King, Hon. W. (of Cork)
Knight, Robert
Labouchere, Henry
Latouche, Robert
Lascelles, Hon. Henry
Lambert, James S.
Lawley, Francis
Lennard, Thomas B.
Littleton, Edward J.
Lott, Harry B.
Lushington, Dr.
Macauley, T. B.
Macdonald, Sir J.
Mackinnon, Charles
Mackintosh, Right Hon. Sir James
Marryatt, Joseph
Marshall, John
Marshall, William
Marjoribanks, S.
Martin, John
Maxwell, Henry
Milton, Viscount
Monck, J. B.
Morpeth, Viscount
Normandy, Viscount
Norton, Gen. C.
Nugent, Lord
O'Connell, Daniel
Ord, William
Oxmantown, Lord
Pallmer, C. N.
Palmer, C. Fysche
Palmerston, Viscount
Peachy, General W.
Pendarvis, E. W. W.
Phillimore, Dr.
Philips, Sir G.
Philips, G. R.
Powlett, Lord W.
Ponsonby, Hon. F.
Ponsonby, Hon. W.
Price, Sir Robert
Protheroe, Edward
Rancliff, Lord
Ridley, Sir M. W.
Robinson, Sir George
Robinson, G. R.
Rumbold, Charles E.
Russell, Lord John
Russell, Lord W.
Russell, W.
Sadler, Mich. Thos.
Sanderson, Richard
Sandon, Viscount
Shelley, Sir J., Bart.
Slaney, R. A.
Smith, John
Smith, Hon. Robert
Smith, William
Spence, George
Stanley, Lord
Stanley, Hon. Ed. G. S.
Talmash, Hon. F.
Thomson, C. Poulett
Trant, William H.
Tufton, Hon. Henry
Tynte, Charles K. K.
Vyvyan, Sir R., Bart.
Ward, John

the discussion will take place. Our readers will recollect that this Bill was introduced by Sir Robert PEEL in the House of Commons, on the principle of revising, consolidating, and *ameliorating* the laws relative to a crime which,

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Wall, C. Baring
Warburton, Henry
Western, C. C.
Wilbraham, George
Wilson, Sir Robert
Wood, Ald. Matthew
Wood, John
Wodehouse, E.
Wynn, Rt. Hon. C.

Tellers.

Buxton, Thomas F.
Rice, Thomas Spring

Paired off.

Anson, Hon. Col.
Attwood, M.
Baillie, Col. J.
Beaumont, J. W.
Belgrave, Earl
Birch, Joseph
Calvert, Charles
Carew, R. S.
Coke. Thomas W.
Davenport, E.
Denison, William J.
Dundas, Rt. A.
Ellis, Hon. G. J. W. Agar
Ferguson, Sir R. C.
Guest, Josiah J.
Gordon, Robert
Howick, Lord
Hobhouse, J. Cam
Lumley, John S.
Power. Richard
Ponsonby, Hon. G.
Poyntz, W. S.
Rowley, Sir William
Sykes, Dan.
Stewart, John
Taylor, M. A.
Townshend, Lord C.
Talbot, R. W.
Tennyson, Charles
Tavistock, Marquess
Wood, Charles
Webb, Colonel

LIST of the MINORITY of 136, who voted on Monday, the 7th of June, 1830, *against* abolishing the PUNISHMENT of DEATH in all cases of FORGERY, except the Forgery of Wills.

Alexander, James
Antrobus, Gibbs C.
Arbuthnot, Rt. Hon. C.
Arkwright, Richard
Ashburnham, Hon. P.
Ashurst, W. H.
Astley, Sir Jacob
Atkins, Ald.
Baker, Edward
Bankes, George
Bankes, William
Bankes, Henry
Barne, Col. M.
Bastard, Capt. J.
Bastard, E. P.
Beckett, Rt. Hon. Sir J.
Beresford, Lieut.-Col. M.
Bernard, Col.
Bingham, Lord
Bourne, Rt. Hon. S.
Boyle, Hon. John
Brydges, Sir John
Burrard, Lieut. George
Calcraft, Rt. Hon. J.
Calvert, John
Campbell, Archibald
Capel, John
Carrington, Sir E.
Castlereagh, Viscount
Chaplin, Col. Thomas
Chaplin, Charles
Clerk, Sir George, Bart.
Clive, Henry
Cockburn, Right Hon. Sir Geo.
Cooper, B.
Coote, Sir C. H., Bart.
Corry, Viscount
Courtenay, Rt. T. P.
Cradock, Col.
Cripps, Joseph
Darlington, Lord
Daly, James
Dawkins, H.
Doherty, John
Domville, Sir C.
Downes, Lord
Douglas, W. R. K.
Drummond, Home
Du Cane, Peter
Dugdale, D S.
East, Sir E. H., Bart.
Eastnor, Viscount
Egerton, Wilbraham
Eliot, Lord
Estcourt, T. H. G. B.
Estcourt, T. G. B.
Fane, Gen. Sir H.
Fellowes, Hon. H.
Fitzgerald, Rt. Hon. M.
Fitzgibbon, Hon. R.
Forrester, Hon. G. C.
Garlies, Viscount
Gilbert, Davies G.
Goulburn, Rt. Hon. H.
Gordon, John
Grant, Sir Alex., Bart.
Greene, Thomas G.
Greville, Hon. C.
Hardinge, Sir Henry
Hart, Gen. G. V.
Herries, Rt. Hon. J. C.
Hill, Sir George
Holmes, William
Hope, Henry J.
Hoy, James
Hulse, James
Hutchinson, J. H. (of Tipperary)
Inglis, Sir R. H., Bart.
Innis, Sir Hugh
King, Sir J. D., Bart.
Knox, Hon. J. H.
Langston, J. H.
Lewis, Rt. Hon. T. F.
Legge, Hon. A.
Lindsay, Col. James
Loch, James
Loch, John
Lowther, Sir J., Bart.
Lowther, John H.
Lowther, Viscount
Lushington, Col.
Lygon, Hon. Col.
Malcolm, Neill
M'Kenzie, Sir James
M'Leod, J. N.
Martin, Sir T. B.
Maxwell, J.
Moore, George
Murray, Rt. Hon. Sir G.
Nelld, M.
O'Brien, Lucius
O'Brien, W. S.
Parnell, Sir H.
Penruddock, J. H.
Pennant, George H. D.
Prendergast, M. G.
Peel, Rt. Hon. Sir R.
Peel, William Yates
Pitt, Joseph
Planta, Joseph
Powell, Alexander
Rickford, Wm.
Rogers, Edward
Ross, Charles
Scott, Henry
Seymour, Horace
Sibthorp, Col.
Smith, Vernon
Smith, J. Abel
Smith, George
Smith, S.
Sotheron, Admiral
Spottiswoode, A.
Sturt, H. C.
Thompson, George L.
Tomes, John
Townshend, Hon. J.

though of great moral guilt, and of pernicious consequences, has been visited with such disproportionate severity by a multiplicity of penal statutes, as to prevent, in a great measure, their own execution. It was admitted by the Right Honourable Secretary, on moving for leave to bring in his Bill, that the legislature, in treating of this offence, from the eighth year of the reign of King William III. to the present day, had added upwards of *sixty capital* enactments to the Statute-book; thus including a multitude of offences, coming within the definition of forgery, of various degrees of moral and social delinquency, under the one sweeping denunciation of *death!*

The feelings of society have long been disgusted with the spectacles of extermination which these laws have produced. The repeated executions, some years ago, for the forgery of one-pound notes, in consequence of prosecutions by the Bank of England, are fresh in the recollection of the public, who saw, at that time, that the crime, instead of being repressed, became alarmingly more frequent,* as one batch of victims after another was offered up to the vengeance of the law! These executions only ceased when the small notes were withdrawn from circulation,—so much stronger was the temptation to the crime than the terror of the punishment. * * *

Upwards of two hundred petitions, we must again remind the supporters of exterminating statutes, have been

* See Notes, page 11, *et seq.*

Tunno, E. R.	Bernard, Thomas	Lowther, Col.
Van Homrigh, P.	Bright, Henry	Osborne, Lord F.
Walrond, Bethel	Belfast, Lord	Pringle, Sir W. H.
Wetherell, Sir C.	Beresford, Sir J.	Peel, Col. J.
White, Henry	Carmarthen, Lord	Phipps, Hon. Gen.
Whitmore T.	Cooke, Sir H. F.	Roberts, W. A.
Wilson, R. F.	Corry, Hon. Henry	Rochfort, Col. G.
Wood, Col. T.	Croker, Rt. Hon. J. W.	Smith, Christopher
Wortley, Hon. J. S.	Dalrymple, Sir H.	Stewart, Sir M. S.
Tellers.	Dundas, Hon. H.	Trench, Col.
†Dawson, G. R.	Gower, Lord L.	Vivian, Sir R. H., Bart.
Sugden, Sir E. B.	Howard, Hon. H.	Valletort, Lord
Paired off.	Hay, Lord John	Williams, Owen
Arbuthnot, Hon. H.	Knox, Hon. T.	Wilson, Col.

† Mr. George R. DAWSON voted in the MINORITY, notwithstanding he was one of the *London Directors* of the Provincial Bank of Ireland, who, at a meeting specially convened, *unanimously agreed* to petition *against* the capital law of forgery. It is true their petition was *never presented;* but this is a circumstance which requires explanation. We are in possession of the singular facts of the case.

presented to the legislature in the present Session, praying for the abolition of capital punishment for forgery, on the various grounds—that it is opposed to revealed religion—to reason—to the natural sentiments of humanity—and to public opinion; that it is, in consequence of its extreme severity, of *uncertain* execution, thereby encouraging crime, by holding out the hopes of impunity to the offender, and, consequently, rendering peculiarly *insecure* the property which it was intended to protect.

But, in addition to this mass of petitions, to which appeared the signatures of bankers, merchants, clergymen, magistrates, barristers, solicitors, and private gentlemen, was one petition which afforded the best evidence that could be given to parliament touching the single point of the insecurity of bankers' property, in consequence of the cruelty of the law producing a conscientious disinclination to prosecute offenders.

This petition was presented by Mr. BROUGHAM.—By whom was it signed? By *one thousand bankers!* What was the language which they addressed to the legislature? Here it is—'That your petitioners, as bankers, are deeply interested in the protection of property from forgery, and in the conviction and punishment of persons guilty of this crime—that your petitioners find, by *experience*, that the infliction of *death*, or even the probability of the infliction of death, *prevents* the prosecution, conviction, and punishment of the criminal, and thus *endangers* the property which it was intended to protect—that your petitioners therefore pray that your Honourable House will not withhold from them that protection which they would derive from a *more lenient* law.'

Here, in the simple and forcible language of truth, gathered from long experience, is the appeal to parliament of one thousand bankers of the United Kingdom, supplicating for the abolition of the capital law of forgery, on the interested principle of the insecurity of their property

under the existing laws. Such are the witnesses—such the evidence!

Leaving religion and all moral and humane considerations out of view, here is the testimony of cold, and even selfish, calculation. It shews the injurious consequences resulting from the present state of the law in a commercial point of view. Bankers do not *theorize* for the sake of *humanity*, to their own pecuniary prejudice; nor are they exactly the class of men who prefer "sentiment" to self-interest. It happens, however, in this case, that their particular interests coincide with the view of this question, which is derived from the higher considerations of religion, reason, and humanity.

Can the legislature refuse to listen to the evidence of those who know the working of the law best—whose property is most affected by its operation—and whose demand of an efficient law to guard their property against depredation, goes, not to destroy, but to save the *lives of men?*—The House of Commons have listened to their appeal—they have decided in favour of the calculations of commerce; and the rights of humanity equally demand it.

We hope those who have hitherto opposed the mitigation of the criminal code in the other House, will recollect that this is not a question of politics, in which men may safely indulge in speculative opinions even against the sense of a great proportion of the community; but that it is a question of *justice*, and that life is at stake. In such a question, an error on the side of humanity is easily recalled, while, on the opposite side, it is irreparable.

The vote of the House of Commons is now on the records of history, and *will assuredly, one day or other, if defeated now, become the law of the land.* But we will not anticipate a decision this evening that would severely disappoint the country; we would rather encourage the hope that the House of Lords will make the inchoate triumph of civilized law over cruel prejudices complete, and accede to

the earnest supplication of practical men, backed by the highest considerations that can operate on the minds of dispassionate and enlightened legislators.—*Morning Herald, Tuesday, June 22, 1830.*

Committal of the Bill in the Lords.

It was arranged some days ago that the House of Lords was to go into Committee on the Forgery Bill to-night. We know not whether, under the existing state of things,* that intention will be proceeded with. If the House should go into Committee, the Lord Chancellor will state his objections to some clauses in the Bill, and endeavour to convince the House that the punishment of *death* ought to be retained, in certain instances, in which the House of Commons have, after two or three discussions, and the most deliberate consideration, decided that it ought to be abolished.

For our own part, we regret that the punishment of death has been retained even in a solitary instance—that of the forgery of *wills*—because a main argument for repealing the sanguinary punishment is its *inefficacy;* and to make the case of *wills* an exception to the general amelioration of the law, is to leave property, in that instance, *less efficiently* protected than in others.

As to the case of negotiable securities for money, not to say any thing of the two hundred petitions from various parts of the kingdom, *the Bankers' Petition,* signed by one thousand of that practical and calculating race of men, is conclusive on the question of excessive severity producing extreme *insecurity.* The reasoning that shews it to be impolitic to make the forgery of negotiable securities for money a capital crime, applies with equal force to the forgery of wills.

* The death of THE KING, by which the Crown descended to His present Majesty, WILLIAM THE FOURTH.

We do not think there could be a more auspicious moment than the present to mitigate a law which reason has already condemned as disproportionate and cruel, and which the House of Commons has declared to be ineffective. It was a good old custom of this realm which dedicated the opening of a new reign to acts of mercy. Let the present be signalized by a humane spirit of legislation, rectifying, in this respect, the barbarous severity of the Statute-book; and it will not only bring more protection to property, but hallow the sceptre of the monarch, as the symbol of a truly enlightened dispensation in the eyes of his people.

We cannot conclude these observations without remarking that the Forgery Bill, as it has gone up to the House of Lords, is defaced by the most extraordinary clerical errors. For instance, it contains a clause by which the punishment of death is retained for several offences of forgery, although the House of Commons decided that death, as we have stated, was to be abolished in all cases but the forgery of wills. It also annexes to one of the most serious and dangerous cases of forgery—that of Bank Stock—the *minimum* instead of the *maximum* of secondary punishment. Such is the care and attention with which acts of parliament are drawn up, even where they are of the most penal nature.

If the House of Lords made no other alterations in the Bill, it would be necessary to move amendments to rectify those disgraceful blunders, and then the Bill should necessarily go back to the Commons. It has also been limited to England, instead of extending, as was intended, to the United Kingdom, which would eventually make a new Bill necessary.—*Morning Herald, Thursday, July* 1, 1830.

Bill read a Third Time in the Lords.

The House of Commons having abolished the punishment of death for forgery, and the House of Lords having

re-enacted it, we have the two Houses of the Legislature directly at variance on a question which involves no less a consideration than—the *life of man.*

What remains for the House of Commons to do? We say, without hesitation, they should throw out the Bill when it comes back to them from the other House. If not, they will *stultify* themselves, and deserve the severest reproach that public opinion can cast upon them, by reviving now those exterminating principles which, only a few short weeks before, they had solemnly pronounced to be disgraceful to the law of England.

In the meantime, we cannot avoid calling public attention to what took place in the House of Lords on Tuesday evening, when the Bill, as altered and restored to its sanguinary character in the Upper House, was read a third time. Previously to the reading of the Bill, Lord HOLLAND, on presenting a petition praying for the abolition of the punishment of death in *all cases of forgery*, took occasion to observe, that if, that evening, on the third reading of the Bill being moved, he proposed that it should go again before a Committee, it would be with a view to *record* his opinion against its principle, for he was persuaded that the punishment of death for forgery must be *commuted ere long;* and his Lordship emphatically added, that it was his conscientious conviction that not only this crime, but *all other* crimes *against property*, unattended by violence, should be visited by a *secondary* punishment—a sentiment in which we cordially concur.

On the third reading being moved, Lord HOLLAND accordingly proposed that the Bill should be recommitted —a motion which their Lordships negatived. But Lord WYNFORD, who had before distinguished himself as an advocate for a return to the capital law, went beyond all other members of the House. He thought the law was not sufficiently severe—not sufficiently opposed to public opinion —and he resolved to remedy that defect. He said, if the

Bill were again going into a Committee, he had an amendment to propose in one of the clauses—it related to the *attestation* of a forged power of attorney. That was not at present a capital offence; but he thought the witness, as an accessory, should be punished in the same degree as the forger, 'because,' said his Lordship, 'there is *no difference* in the *moral* turpitude.'

Upon this the Lord Chancellor, whose acuteness and tact made him at once perceive that Lord WYNFORD had fallen into the dangerous error of some advocates in parliament as well as elsewhere, of allowing his zeal to outrun his judgment, rose rather hastily, and said that the effect of his Noble and Learned Friend's amendment would be, 'not to mitigate the law, but to render it more severe;' and, after some further remarks, said, '*probably this question will be brought before us again in the next session of parliament;*' intimating that therefore it was not necessary to do, at present, all that might be done.

We expressed, a day or two ago, a hope that it would come before parliament next session, and that it ought to be introduced to the legislature *de novo*. We can now assure both the Lord Chancellor and Lord WYNFORD that public opinion will again endeavour to make itself heard in parliament on this subject, and will persevere as long as the conduct of the legislature makes it necessary.

With respect to Lord WYNFORD'S amendment, Lord TENTERDEN differed from that Noble and Learned Lord as to the *moral turpitude* being the same in both cases—namely, in the case of the forgery of a power of attorney, and the forgery of the attestation. Here we see that both Lord TENTERDEN and Lord WYNFORD apply the test of *moral turpitude* to crime when considering the degree of punishment that ought to be annexed to it. Will either of those Noble and Learned Lords inform us what coincidence there is between the moral turpitude of *forgery* and of *murder*, that the law should annex the same punishment to each;

and why, with their Lordships' approbation, the forger and the murderer should *perish on the same scaffold?*

To revert to the proceedings of the House, Lord WYNFORD said, that, on the understanding that this subject would soon be again brought before them, he would withdraw his amendment. Does he mean to hold up his amendment *in terrorem* before the eyes of the friends of a civilized system of justice, that they may dread the law will become worse, instead of better, by their interference?

We care not what amendments for making the law more cruel than it already is, Lord WYNFORD may propose, convinced as we are that, notwithstanding the recent decision of the House of Lords, the whole of the capital provisions of the law applying to forgery, as well as to every species of the invasion of property, unaccompanied by violence, will, before a very long time, be erased from the Statute-book.

In the meantime, the numerous classes of enlightened and practical men who have petitioned for the abolition of the punishment of death, should *not relax* in those efforts which, though not yet attended by the success they deserve, must eventually and signally triumph over the barbarous prejudices that reason, justice, and sound policy renounce.—*Morning Herald, Thursday, July* 15, 1830.

Lord HOLLAND'S *Protest.*

It will be seen from our parliamentary report, that the discussion of the "Lords' amendments" to the Forgery Bill, which amendments have restored the capital penalties in every instance in which they had been thrown out in the Commons, was last night fixed by Sir Robert PEEL for Monday evening next.

The Right Hon. Secretary stated as his reason for moving the discharge of the order, and postponing it to Monday that it had been strongly urged upon him in consequence of

the indisposition of an Hon. Member who had taken a prominent part in the debates upon the question.

We trust that on Monday night those members who, after the most strenuous exertions, had succeeded in persuading the House of Commons to prune away the barbarous severities of Sir Robert PEEL's Bill, and to make it more conformable to sound principles of justice, and the spirit of a civilized age, will be in attendance in their places, to resist the passing of the Bill as it now stands, and to save the House of Commons from the disreputable inconsistency of *rejecting* and *adopting* the *punishment of death* in the same session.

We have argued this question so often, and have put it in so many different points of view, that it is difficult for us to say any thing new on the subject; nor do we see why we should endeavour to adduce additional arguments if we could, as long as those which we have already advanced remain unanswered; but it is with peculiar pleasure we call the attention of our readers to the admirable Protest of Lord HOLLAND against the Bill, which will be found in another column, and which, in force of reasoning, and energy of expression, is worthy of the great occasion which has called it forth.

The first ground of dissent from the Bill which his Lordship states ought to be conclusive, and would be so with any body of men, who, along with the ambition of law-making, possessed the *legislative capacity*, is—

'Because the Bill, as amended in the Committee, annexes or 'continues the punishment of death in many cases of forgery, 'which crime, however injurious to society, is an offence of 'human institution. It can only be described as a spoliation of 'property unattended with violence: and the common feelings of 'mankind, the maxims of religion and philosophy, the authority 'of the most eminent men, and the practice of the most civilized 'nations, as well as of our *ancient law*, are generally averse to 'punishing by *death* any crime, in the perpetration of which no 'violence is used or intended.'—*(First ground of dissent.)*

In reference to a certain decrease in the number of prosecuted forgeries of late years, on which Sir Robert PEEL laid great stress, as proving in his estimation the efficacy of the existing laws, his Lordship says what it would severely task the Right Hon. Secretary's ingenuity to meet with an effective reply. Here are his words, to which we entreat the advocates of sanguinary punishment to give their earnest attention :—

'Although forgeries may have become less frequent of late 'years, in consequence of the resumption of cash payments, or 'from other causes, such *recent* diminution of that species of 'guilt cannot be reasonably attributed to the *terror* of a punish- 'ment which has subsisted and been in force for *nearly a century*— 'which, at present, in *seven* cases out of *eight*, is *not* inflicted—and 'which, when *sternly* and rigorously *enforced, failed* to produce any 'such diminution. We were therefore unwilling too hastily to 'infer the efficacy of severity from any recent or accidental dimi- 'nution of the offence; and we were confirmed in withholding our 'assent to such precipitate reasoning, by reflecting that forgeries 'have often been, and still continue to be, *more frequent* in this 'country than they were *before* the punishment of *death* was 'annexed to that crime.'—*(Third ground of dissent.)*

The passages which we have quoted, and indeed the whole of the 'Protest,' display that power of reasoning, equally exact and comprehensive, which is truly characteristic of a mind adapted by nature and intelligence to the labours of enlightened legislation.* This Protest affords an addi-

* The following is Lord HOLLAND'S Protest against the passing of the Law of Forgeries Bill :—

'Dissentient—First,—Because the Bill, &c. (See text, p.62.)

'Second,—Because no proof has been adduced, and there is 'no ground for suspecting, that the crime of forgery has grown to 'be "enormous, frequent, and dangerous," which are the circum- 'stances required by Sir Matthew HALE to justify a lawgiver in 'annexing a punishment, and even death, "beyond the demerit of 'the offence itself, simply considered.'"

'Third,—Because, Although, &c. (See text, p. 63.)

'Fourth,—Because sundry laws, inflicting capital punish- 'ments on a variety of crimes, have, during the last 70 years, been

tional proof that the arguments are all on the one side of this question, and the obstinate prejudices of a few individuals, backed by Government influence, on the other.

As to the *final result* of such a conflict, we have, as we frequently stated, no doubt whatever: our only anxiety is, that the conquest which humanity and sound justice must eventually make over the cruel errors of a barbarous system, may be achieved with as little delay as possible; and that our statesmen may not continue to be distinguished for the

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'abrogated in civilized states; and in no one instance does it 'appear that the removal of the terror of DEATH has been followed 'by any increased frequency of the crime. The laws have generally 'been invigorated by such wholesome relaxation, and experience 'has confirmed the great axioms which speculative philosophers 'and practical moralists had long since inculcated—namely, that 'capital punishments rarely hinder the commission of a crime, but 'prevent its detection—and that the certainty of a sentence, com- 'paratively mild, extirpates wickedness more effectually than the 'dread of a punishment which the common feelings of mankind 'deem disproportionate to the offence, and therefore scruple to 'concur with the community in inflicting.

'And, Fifth,—Because, if justice enjoins the necessity of pro- 'portioning the punishment to the moral turpitude of an offence, 'prudence no less requires that the compassion, likely to be pro- 'duced by such punishment, should not exceed the indignation 'generally excited by the perpetration of the crime; and that the 'penalty should be regulated by the state of public opinion at the 'time, and in the country where such law is enacted, or allowed to 'continue; but, in this instance, the frequency of pardon, the 'numerous petitions of the people, and the vote of the Commons 'House of Parliament, sufficiently attest that the punishment by 'death of criminals convicted of forgery, is abhorrent to the spirit 'of the age, contrary to the judgment of the public, and revolting 'to the feelings of the community.

(Signed) 'VASSALL HOLLAND.

'RICHMOND,

(For the 3d and 5th reasons)

'July 13. 'DURHAM.'

combined obstinacy and weakness which only concede the improvements which civilization demand, when they find themselves incapable of further resistance.—*Morning Herald, Saturday, July* 17, 1830.

[The Forgery Bill, as altered by the Lords, was returned to the Commons *immediately before* the prorogation of parliament—a period when it is extremely easy for *the Minister* to obtain a majority, because a large proportion of independent members are then absent from their places. Sir Robert PEEL consequently succeeded in restoring his Bill to its original state.—Notwithstanding this re-enactment of the law of forgery, with all the capital provisions which the House of Commons had, in the first instance, thrown out of the Bill, PUBLIC OPINION was so far respected, that (although one deliberate *attempt* was made,—see extracts from the *Morning Herald*, Aug. 26, 1831,) *no execution ever took place under it.* The law itself continued upon the Statute-book only two years, when, as the writer of the foregoing articles confidently predicted, it ceased to exist. In the session of 1832, (by the 2d and 3d of Will. IV. cap. 123,) the legislature abolished the punishment of death for forgery, with two exceptions, viz. *wills*, and *powers-of-attorney* relating to the public funds;—exceptions not justified upon any principle, but which make it appear as if parliament anxiously caught up and preserved *some* fragments of those tablets of vindictive legislation, which public opinion had shattered to pieces.—ED.]

Penal Code of FRANCE—*M. de* TRACY'S *motion for the Abolition of the Punishment of Death.*

The reception which the proposition of M. De TRACY, for abolishing the punishment of death, met with in the Chamber of Deputies, proves, beyond all dispute, that the present race of French legislators are not deficient in feelings of humanity.

In supporting that proposition, the venerable LAFAYETTE said,—

'I shall ask for the abolition of death until I have the *infalli-*
'*bility* of human judgment demonstrated to me. The punishment
'of death has always inspired me with feelings of horror since the
'*execrable use made of it during the former Revolution.*'

In our own House of Commons the Minister perpetuates the punishment of death for forging a one-pound promissory note, not because that punishment is proportionate to the moral guilt of the offender, but because—hear it, humane legislators of France!—because it is, in his opinion, the most *effective* punishment. When *morality* is left out of the penal code, the question of inflicting death for the most venial, as well as the most heinous, legal or political offences, becomes a mere question of *expediency*.

DANTON, MARAT, and ROBESPIERRE, at whose crimes the Home Secretary, no doubt, would shudder, thought it *expedient* that all who resisted their political supremacy, should suffer the same punishment which certain Directors of the Bank of England thought it expedient should be inflicted on those who counterfeited their *one-pound notes!*

In the one case, morality, and a regard for human life, were dispensed with for the sake of *ambition*—in the other, for the sake of *Mammon*. Hecatombs of *human victims* have been offered up on the altars of both!

It will be seen, from our French news to-day, that the King of the FRENCH has been addressed on the subject of M. de TRACY'S motion by the Advocate LUCAS, at the head of a deputation from St. Brieux, who expressed a hope that the country would owe him the boon of the abolition of the punishment of death, to whom France owed the extinction of civil war. The King replied, that he desired the abolition, from a conviction which he had entertained throughout his life; and added—'I shall do my utmost to realize your wish, which is also mine.'—A press of matter prevents us

proceeding further with this subject at present; but we shall take an early opportunity to return to it.*—*Morning Herald, Monday, August* 23, 1830.

Debate in the French Chamber of Deputies—A large Majority decide upon an Address to THE KING, *supplicating him to prepare a law for the* ABOLITION *of the punishment of death.*

CHAMBER OF DEPUTIES—Friday, October 8, 1830.

(PRESIDENCY OF M. LAFITTE.)

The Order of the day was the discussion of the proposition of M. de TRACY, for the abolition of the punishment of death.

M. de TRACY wished no one to entertain the idea that his proposition was merely the declaration of a principle—of a theory. The proposition he should make to the Chamber was conceived in these terms:—'I have the honour to propose to the Chamber to declare by a law that the punishment of death is abolished in France.' This proposition is really a law. In this respect the Commission may, and ought to, consider my proposition as a proposition of law. It ought to propose the adoption, rejection, or modification of it. The speaker announced that he would consider

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* PARIS.—On the 17th the King of the French (LOUIS PHILIP) received a deputation from St. Brieux, capital of the *Cotes du Nord.*

M. Charles LUCAS, Advocate in the Royal Court of Paris, one of the deputation, addressed the King in a speech, of which the following is the conclusion:—

'Permit me, Sire, to express a personal wish—namely, that 'we owe the abolition of the penalty of death to the reign to which 'we are already indebted for the abolition of civil war.'

The King said, in his answer, that he had not forgotten the brave battalions of the *Cotes du Nord*, with which he had fought at Gemappe; and that if there still remained in the department some of those old defenders of the country, he begged the deputation to tell them that he remembered them with affection.

'I am happy,' added the King, 'at the abolition of civil war 'in your country; and, as for the abolition of the penalty of DEATH, 'I am led to desire it, from a conviction which I have entertained 'throughout my life, and I shall do my utmost to realize your 'wish, which is also mine.'

succinctly the law relative to the punishment of death. He cited what had passed in the Constituent Assembly, when, with the unanimous consent of two Committees, the abolition of the punishment of death had been proposed. The Honourable Member then entered into a learned and luminous discussion, to prove that society had no right to pronounce the punishment of death.

M. KERATRY examined the question in a philosophical point of view. As to death for political crimes, he asked, what advantage could society derive from the death of the guilty person? He thought that, far from being useful to society, death in this case might become hurtful. Looking to the punishment a political offender exposed himself to, was it not likely that his cause was good, since he had embraced it at the peril of his life?

General LAFAYETTE—'I support with all my power, as I have 'always done, the proposition of my Hon. Friend M. de TRACY. 'I will observe that this question ought to be looked at from the 'elevated point of view in which the last revolution has placed 'us. The question is as to completing our revolution. This com- 'pletion will take place by the elections. The electoral Colleges 'are about to send us Deputies capable of appreciating all that the 'revolution has done, and all that it promises us. *Those who ask 'for the adjournment of this proposition, have not had the misfortune to see their families dragged to the scaffold.* I am, for my part, the 'enemy of the punishment of death; and, above all, the enemy 'of the punishment of death in *political* matters.'

M. GIROD DE L'AIN, after a remarkable discourse, proposed 'that the punishment of death is abolished. A project of law will 'be presented to the Chamber during the session, to determine the 'punishments which ought to be substituted for the punishment 'of death, in the cases to which it is now applied.'

A long discussion took place, as well upon the proposition of M. GIROD DE L'AIN, as upon that of M. KERATRY, to refer the matter to a Commission, which, during the sitting, should draw up an Address to THE KING, supplicating him to prepare a law for *the* ABOLITION *of the punishment of death.*

The latter proposition was adopted.

At eight o'clock in the evening the Chamber again met.

M. BERENGER presented the proposed Address to the King.

MM. DE TRACY, JACQUEMINOT, EUSÈBE SALVERT, and others, were heard relative to the Address. The Chamber succes-

sively adopted the different paragraphs; and also voted the adoption of the Address, after a scrutiny, in which the numbers were—225 *for*, and 21 *against* it.*

The PRESIDENT announced that THE KING would, to-morrow, at 12 o'Clock, receive the Deputation with the Address.—*Morning Herald, Monday, October* 11, 1830.

Some remarks of the JOURNAL DE PARIS *imply that the French Chamber of Deputies is insincere, wishing only to save the lives of the* EX-MINISTERS, *and not to* ABOLISH *the punishment of death.*

The French Criminal Code, which of itself would be sufficient to immortalize the name of NAPOLEON, is, beyond all comparison, milder than our own, and yet it wants ameliorations. Let it receive these ameliorations, not for a political purpose, but because humanity demands them. Men are unworthy the name of legislators who would make or unmake laws for a particular object, under the cover of a general principle.

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* We have received a list of the names of the (21) Hon. Deputies of the Opposition (called the 'extreme left') who voted against the Address to the King upon the abolition of the punishment of death. It is not the least remarkable circumstance in this question to see those who, at any other time, would be the first to demand the abolition of the penalty of death, *now* voting against a philanthropic opinion which they had entertained during the whole of their lives.—*Messager des Chambres, Wednesday, Oct.* 20, 1830.

The following is the list of the *twenty-one*:—

MM. Audry de Puyraveau.	MM. Devaux.
Bavoux	Etienne.
Louis-Basil.	Gallot.
de Brigade.	Hernox.
Chardel.	Labbey de Pompières.
Constant, Benj.	Lamarque, General.
Corcelle.	Lobau, Comte de.
Daunon.	Martell.
Delaborde, Alexandre.	Maugin.
Demarçay.	de Podenas.

M. Salvert, Eusèbe.

Yet this is what the *Journal de Paris* charges the Chamber of Deputies with doing, in *voting for the abolition of the punishment of death*, in the present state of affairs, *only to save the lives of the ex-Ministers*, without any serious intention of carrying ultimately into effect the great penal reform which was at first propounded. We hope this is a false accusation, and that the representatives of a great people, who have just purchased their freedom at the greatest sacrifices, are incapable of acting in a manner so deficient in manliness, wisdom, or dignity.

We, too, have advocated the extension of mercy to the ex-Ministers as far as life is concerned, not because we do not think that men whose wicked counsels caused the shedding of the blood of thousands, do not deserve the highest punishment inflicted by the Penal Code, but because we think, after so great a victory, the French people can afford to be magnanimous, and ought not to deprive history of the glorious task of recording, for the example of all future ages, the singular fact, that they achieved the greatest revolution which the world ever saw, without shedding, after the defeat of their armed oppressors, one drop of blood! We advocated this act of clemency separately from the consideration of the reform of the Penal Code; for we do not like great principles to be sported with, by making them a pretence for carrying some particular object.

The French Journal to which we have alluded, in speaking of the real purpose of the Chamber being different from the apparent one, uses the following remarkable words:—

> 'What shocks us is to see a deceitful majority, to all appearance, vote for a *principle* which probably will receive but *one* single speedy application. What will become of the Address of the Chamber of Deputies in case of condemnation? With respect to the condemnation of Ministers, it will chain the Executive; for it cannot strike in the name of the nation, when the pretended representatives hold thus its arm suspended. Then some time after, when

the exiled Ministers shall be forgotten at the Court of the ex-King, who is their accomplice—when the *Address for the abolition of capital punishment* will no longer have a *specific* object, this question will, perhaps, be seen to *miscarry* in a *serious discussion*, which, by the acknowledgment of the Commission, does not yet seem to be ripe for a majority.'*

We hope this conjecture is erroneous, and that so noble an object of enlightened statesmanship as the reform of the Penal Code, is not deceptiously advocated by the French legislators, for the benefit of a few criminals, without any reference to a general adoption of an improved system of penal jurisprudence. Such a proceeding would be a stratagem unworthy the Senate of a great nation, and would expose its authors to deserved contempt.—*Morning Herald, Friday, October* 22, 1830.

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* Subsequent events but too fully confirm the gloomy anticipations of the *Journal de Paris*.—See articles from the *Morning Herald* of October 24, 1831, February 10, and September 3, 1832, and January 13, 1836.—We can hardly refrain from inserting the paragraph, which immediately follows the one referred to, from the French Paper, which is as follows:—'We were the first to stand 'up against the rigour of a penal system which is too prodigal 'of the blood of the guilty. Several times we have given way to 'the delightful idea of the possibility of reconciling the wants of 'society with the *inviolability of human life*. How does it happen, 'however, that we cannot now see, without repugnance, this great 'question thus suddenly agitated?—It is because we feel the whole 'extent of its importance; it is because such a question seems to 'us of the number of those which cannot be sufficiently followed; 'it is because we wish to see it carefully discussed, not by an 'incomplete Chamber hurried along by its passions,' [as, but too often, the French writer might have added, legislators have been hurried on when giving their sanction to the judicial *forfeiture* of life]; 'but by an immutable legislation divested of all personal 'interests; and because we do not wish to make a law of circum-'stances a law which ought to *rest upon the eternal principles of jus-'tice*, reason, and humanity.'—*Journal de Paris, October* 10, 1830.

The question as to the punishment of the ex-Ministers of Charles X, of France.

We regret to find the opinion gains ground in France, that the ex-Ministers of CHARLES X, if convicted—and of that there can be little doubt—will assuredly suffer death on the scaffold. If treason ever deserved the axe, their's does. Never was there a more wanton and violent subversion of order than they committed, or one attended with more destructive consequences.

The violation of oaths—the tearing asunder of the Charter—the devoting the inhabitants of Paris to military execution, for refusing to submit to their outrageous decrees, and placing the destroying sword in the hand of a King who had sworn to keep inviolate the chartered privileges of his subjects—are offences which, whether we look at them in a political or a moral point of view, admit of no palliation in the eyes of stern Justice. But a victorious people can afford to be merciful—and mercy is an attribute of magnanimity.

When we look at the great events which have changed the destinies of France, and converted the extreme peril of a people into their imperishable glory, we confess that we wish the sword of Freedom, which has been sheathed in peace, may not be drawn in vengeance! We wish that blood which has flowed in civil conflict, may not be followed by fresh streams upon the scaffold. Nobly have the people shewn their power:—they have given tyrants a lesson of great revenge—now let them teach them one of clemency; let them prove that mercy is not merely a part of the prerogative of Kings, but also sheds a serene splendour round the giant-strength of a liberated people.

We speak of *the people* as the arbiter of the fate of these great public delinquents; because it is said that if the ex-Ministers are put to death, it will be in compliance with the popular desire for their execution. Our Paris correspondent, in his communication in another part of our paper of this

day, says, in adverting to the probability of the infliction of the capital punishment upon the ministerial criminals—'This 'alteration in the general belief (for the contrary opinion 'prevailed some time ago) arises from reports that docu-'ments, involving Ministers in horrid crimes, by anticipation 'had been found in the Government offices; but principally 'from the knowledge that the acquittal of the Ministers 'would, in all human probability, lead to another revolt.'

As to the *acquittal* of the Ministers who signed the ordonnances which deluged the streets of Paris with gore, we never contemplated the possibility of such an event. If the Chamber of Peers acted so weakly or corruptly as to acquit them for the purpose of saving their lives, they would be unworthy ever again to exercise the functions of a judicial tribunal; but we did think it possible that their conviction might not be followed by an exaction of the extreme penalty of the law; and we thought so, because we hoped the people of France would take a pride in having it written in their annals, that they not only offered the most heroic resistance that ever a nation did to their tyrants in arms, but that they gave as splendid an example of mercy to their fallen oppressors.

As living instances of a just retribution, POLIGNAC and his accomplices would afford a more impressive example of the consequences of gross abuse of power, than if they perished by the hand of the executioner. Thus incapable of further mischief, and thus degraded, they would exhibit, in their fallen condition, the ignominious servitude that seems to be the most appropriate punishment for the abuse of political power; while a magnanimous nation, that conquered them in the midst of their armed legions, would, in disdaining to shed their miserable blood, gain a second and a noble triumph by treating them with contemptuous mercy.—*Morning Herald, Tuesday, September* 21, 1830.

The French People prefer Mercy to Vengeance.

The people of Paris seem disposed to teach a lesson of humanity to legislators. The recent French Revolution was characterized by the beautiful union of moderation and power. In dashing aside the chains of a tyranny that existed only to trample upon public rights, the people, even in the fiercest exasperation of their passions, acknowledged the influence of that beneficent spirit which has consecrated their triumph in the eyes of all who have the interests of humanity at heart. That spirit was Mercy! May she ever guide the councils of a great nation, which, having just passed through the perils of a fearful crisis with splendour and strength, has now to reform and consolidate the institutions on which the freedom and prosperity, and, above all, the moral character of a country, depend.

Our great dramatic poet says, that 'Mercy is enthroned in the hearts of kings;' but the late events in France shew that it is no less the glorious attribute of an heroic people! Every incident which shews the progress that humane principles are making in France, forebodes well for the moral and political destinies of the world. So great a nation, in the centre of Europe, adopting merciful and enlightened principles of legislation, cannot fail to exercise a useful moral influence over the legislative proceedings of other nations. It was therefore with peculiar pleasure we read in the letter of one of our Paris correspondents, on Monday last, that a vast concourse of people, who had assembled to render funeral honours to the memories of some of the victims of Bourbon tyranny that, since 'the Restoration,' perished by the *guillotine*, signed petitions to the Chambers for the abolition of the punishment of death.

Our correspondent, after alluding to some intelligence and rumours of a sombre character, says—"On the other hand, we have the consolatory fact that, instead of having assembled on the *Place-de-Greve* yesterday, to invoke vengeance on the heads of the ex-Ministers of CHARLES X,

the Clubs, called 'the Friends of Truth,' and 'the Friends of the People,' after having honoured the memories of BORIES and his companions, signed petitions to the legislature, *calling for the abolition of the punishment of death.*" Thus, with the examples of royal vengeance before their eyes,—with their feelings stimulated by the recollection of the deeds of Bourbon power—they rejected the lesson of revenge, and offered the homage of their supplications to Mercy! And this at a time, too, when the Ministers, whose guilty advice to their infatuated Sovereign caused the streets of Paris to be deluged with the blood of its citizens, are about to appear as criminals at the bar of public justice.

Who could have supposed, a few years ago, that the question of the abolition of capital punishment would be agitated in a country, where the atrocious law of sacrilege was passed—a law only breathing the spirit of the darkest ages of legislative barbarism!

We, who have been long endeavouring to induce our legislature to undertake a rational and thorough amendment of the Criminal Code—a code which, notwithstanding the boasted labours of reform of late years, is still the most sanguinary in Europe—cannot but feel great satisfaction at finding that our principles, though hitherto rejected at home, are making progress among a people whom Englishmen never allowed to be on a level, in point of morality or Christian sentiment, with themselves.—*Morning Herald, Thursday, September* 30, 1830.

Penal Justice in France and England contrasted.

If the crime of high treason in France, and that, too, when committed under circumstances which have caused the sacrifice of thousands of human lives, does not incur the penalty of death, what are we to say of the *justice and humanity* of the English law, which takes away the life of the offender for stealing a sheep, or forging a one-pound promissory note?

Unless the French Government intend to have one scale of punishments for the rich, and another for the poor, or to distinguish ministerial traitors from all others by peculiar lenity and indulgence, it is quite clear that the punishment of high treason in every case—is abolished in France.

The Peers who tried the ex-Ministers cannot find that the law has, in fact, provided *any* punishment for this greatest and most dangerous of crimes; but it was strange the Peers of France never made that discovery—a discovery so interesting to humanity, and which throws such a new light on legislation—until its benefit was to be claimed for the 'regal rebels' who attempted to erase the name of France from the list of free nations, and in that attempt deluged the streets of Paris with the blood of its citizens. The BOURBONS made no such discovery as this in favour of Marshal NEY—of BORIES and his companions—of General BERTHON, and others, who expiated the crime of high treason under the axe of the guillotine. We rejoice, however, for the sake of humanity, that it is at length ascertained the victims of BOURBON vengeance, who suffered death upon convictions for treason since the publication of the Charter of 1814, perished under a *misapprehension of the law!* We rejoice, because we think the punishment of death for crimes inferior to treason must, for the sake of consistency, be abolished.

As to the law of *treason* in England, can that long remain on the barbarous principle on which it at present stands, after the result of the trials of the ex-Ministers in France? It is true, the original punishment, which for centuries outraged not only the dictates of temperate justice, but even the decencies of civilized revenge—such as the cutting down the criminal, while yet alive, from the gallows—cutting him open, taking out his bowels, and burning them before his face—has been mitigated into hanging the culprit until he is dead, and then chopping the head from the dead body, and holding it up to public view

streaming with gore—a barbarous and disgusting exhibition, such as took place in the case of Colonel Despard, and more recently in that of the Cato-street conspirators, and which would have taken place in this country at the present day, if the ex-Ministers of France happened to have been ex-Ministers of England, and had been convicted in our Court of King's Bench of high treason.

But, besides this punishment, high treason works the forfeiture of property, both chattel and real, and produces, as the necesary consequence of the attainder, what is called, in legal language, a corruption of blood, which cuts off the inheritance of all who claim through the attainted ancestor: thus punishing the innocent for the guilty, by depriving the immediate family of the traitor of the means of subsistence, and debarring from inheritable rights those who claim through him, to the remotest generations! We ask if, with the example of what has taken place in France before our eyes, a law so unjust, so vindictive, and so barbarous, can much longer be allowed to disgrace our Statute-book, and belie our civilization?—*Morning Herald, Saturday, December* 25, 1830.

Presentation by Mr. BROUGHAM *in the House of Commons, of the London Jurors' Petition against the Punishment of Death.*

The petition presented to the House of Commons on Friday night by Mr. BROUGHAM for the amendment of the Criminal Law, by the abolition of the punishment of death for offences against property, unaccompanied by violence, (a copy of which will be found in our columns to-day,) deserves the particular attention of the legislature and the country, as well on account of the principle which it involves, as of the persons whose sentiments it expresses.

Looking at it in the latter point of view, or in reference to the persons whose opinions it embodies, we find it to be the petition of the LONDON JURORS, signed by the respec-

tive Foremen of *seven Grand Juries* for the sessions of 1830, and by upwards of *eleven hundred merchants, traders,* &c. who either have served or are eligible to serve on *Juries.*

Looking at it in the former point of view, or in reference to the principle which it advocates, we find it states that the petitioners—

'View with deep regret the excessive and indiscriminate severity 'of the Criminal Laws, which annex to offences of *different degrees* of 'moral guilt the punishment of *death*, and confound the simple inva- 'sion of the rights of property with the most malignant and atrocious 'crimes against the person and the life of man.'

Thus the petition is of no ordinary importance, whether we regard the source from which it emanates, or the object to which it is directed; for it gives us the sentiments of the Jurors of London on the operation of the Laws, which they are continually in the habit of administering, and which can be executed only by their intervention.

In all criminal cases, be it remembered, the maxim of the Constitution of England is, that the Jurors are judges both of the *law* and the *fact.* The presiding Judge, it is true, assists them with his opinion, but the decision is their own. Is it not, therefore, of great importance to the administration of justice, that the spirit of the laws should not be in opposition to the consciences of Jurors?

It is necessary that laws should not rest alone upon their legislative authority, but have also the moral sanction of *public opinion.* The criminal laws of England, in general, have not that sanction; and what is the consequence? They are proportionably difficult of execution. The author of "ANTI-DRACO" said, last year, that,—

'However the lawgivers may be responsible for the spirit of the 'laws, it is the *people* who work the machinery of justice. As prose- 'cutors, as witnesses, as jurors, the *operative* process of Criminal 'Law is in their hands; and if its spirit be of such a character as to 'excite their repugnance, the machinery by which it is to be executed, 'will not work well.'

The petition of the Jurors of London—the very persons who are appointed to give practical effect to the Criminal Law, expresses the same sentiment in other words. It asserts—

'That, in the present state of the law, Juries feel extremely reluctant to convict, where the penal consequences of the offence excite a 'conscientious horror on their minds, lest the rigorous performance of 'their duties as Jurors should make them accessory to *judicial murder*. 'Hence in Courts of Justice a most unnecessary and painful struggle 'is occasioned by the conflict of the feelings of a *just* humanity with 'the sense of the obligation of an Oath.'

It further states—

'That witnesses also are very frequently reluctant to give evi-'dence, lest they might bring upon their consciences the stain of blood; 'and thus criminals, who, under a more rational and considerate code 'of laws, would meet the punishment due to their crimes, escape with 'impunity! For these and other reasons, the petitioners pray that the 'House may take the Criminal Laws into consideration, for the pur-'pose of the revision and amendment of the same, by drawing a dis-'tinction between the simple invasion of the rights of property and 'crimes of violence and blood, and by abolishing the penalty of DEATH 'in all cases in which the legislative power cannot justify, in the eyes 'of God and man, that last and dreadful alternative—*the extermination* 'of the offender!'*

Such are the sentiments of Jurors of London on the present state of the Criminal Law; and the names of upwards of eleven hundred of those individuals, to whose hands is entrusted the "operative process," are affixed to the petition containing such sentiments.

To their powerful appeal, the appeal of practical and well-informed men, is added the no less powerful testimony of Mr. DENMAN, whose judicial experience in the most important Criminal Court in the kingdom (the Old Bailey) entitles his opinion to the greatest deference. He said that

* The reader will find the petition given at length, by referring to the counterpart, presented in the House of Lords, *Tuesday, September* 6, 1831, by H. R. H. THE DUKE OF SUSSEX.—*Vide Post.*

this was one of the most important petitions ever presented to the House; and added, that Jurors ought to be relieved from the painful situation in which they were placed, being now, either obliged to agree to a verdict which was to deprive a fellow-creature of life, contrary to the dictates of reason and humanity, or, by taking a contrary course, to offer violence to their own consciences.—Shall the JURORS OF LONDON, and one of the JUDGES of its great Criminal Court, appeal against the sanguinary severity of the laws, in the nineteenth century, to the legislature of a moral and enlightened people in vain?*—*Morning Herald, Tuesday, November* 23, 1830.

* [The last act Lord BROUGHAM performed in the legislature as *a Commoner*, was the presentation of the London Jurors' Petition. The subjoined report of the proceedings is taken from the *Times* Newspaper of the following day.]

'Mr. BROUGHAM said he had a petition to present, which he 'felt greatly honoured by having been entrusted with, and to which 'he begged the particular attention of the House. The petition, which 'was very ably and clearly expressed, prayed for the abolition of the 'punishment of death for offences unattended by violence; and that a 'distinction might be drawn in our criminal laws between such offences, 'and offences which were marked by bloodshed or acts of violence. 'The petition came from householders of the City of London, who 'were liable to serve on Grand Juries: it was signed by many who 'had served, and by no less than *seven persons who had been Foremen 'of Grand Juries (at the Old Bailey) last year.* It was worthy 'of the attention of the House, on account of the reasons it contained, 'but more especially on account of the authority of the petitioners; for, '*who were so competent to speak of the scruples of Juries, as they 'who had felt those scruples?*'

'Mr. WARD (one of the City Members) bore testimony to the re-'spectability of the petitioners, and supported the prayer of the petition.'

'Mr. DENMAN said that this was one of the most important 'petitions that had ever been presented to the House, and it deserved

Reasons against enforcing the EXTREME *severity of the Law in the case of the Machine-breakers, &c.*†

"Where the axe falls, it shall assuredly smite."

The unusual and mournful spectacle of the hallowed and festive season of Christmas being devoted to the tragic solemnities of Special Commissions, where the ministers of the stern laws are engaged in those duties which are likely to end in the sacrifice of human lives, must fill every Christian heart with feelings of pain and sorrow. It is, indeed, a melancholy necessity which sends our Judges forth to wield the naked sword of Justice against crowds of their offending fellow-creatures, at a time so peculiarly consecrated to the feelings of charity and peace, as that which reminds us of the coming upon earth of the GOD of life, to bear glad tidings to those 'who sat in darkness and the shadow of death,' and to found that religion whose essence is a Divine compassion for the infirmities of human nature, and whose holiest emanation is mercy!

Such a bitter necessity we lament; and we do not lament it the less, because we are convinced it would not have arisen

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'the serious attention of every Hon. Member. The House would 'now see it was a fact, that Jurors were not unfrequently placed in 'the miserable and painful dilemma of refusing to declare the fact, as 'the oath they had taken required them to do, or consenting to admini-'ster a law which they believed to be cruel and unrighteous. He 'knew it had been stated by authority, which, though high, was not 'very competent to judge of the matter, that Juries did not feel any 'scruple to administer the law; but the House now had the most com-'petent authority in direct contradiction to that statement.'

The petition was then read, and ordered to be printed.—*Times, Saturday, November* 20, 1830.

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† 'Within a few days from the time I am now addressing your 'Lordships, the sword of Justice shall be unsheathed, to smite, if it be 'necessary, with a firm and vigorous hand, the rebel against the law!' —LORD CHANCELLOR [*not* Mr.] BROUGHAM'S *speech in the Upper House, Thursday, Dec.* 2, 1830.—(*Hansard's Parliamentary Debates.*)

if the advice given to the late Ministers of the Crown, last session, to enquire into the distresses of the labouring classes, and to afford them some prospect of relief in their misery, had been attended to. But it was more than rejected—it was most haughtily spurned. Ministers denied the existence of that distress which they were called upon to enquire into and alleviate. They listened not to the voice of honest advisers, but to the deceitful representations of those flatterers who preached the doctrines with which vanity was pleased, and indolence satisfied. They turned from the masses of misery that grovelled around them, and, fixing their eyes on the glittering summits of luxurious society, talked only of the increasing wealth and advancing prosperity of England, at the very moment when the working of popular despair was about to give their fallacious statements the most calamitous refutation. In this state of unparalleled difficulty and embarrassment they left the administration of affairs to their successors, who have undertaken a most heavy and responsible task; but who will find, in the conduct of those who preceded them, one-half, at least, of the instruction necessary for rightly administering the affairs of the country—namely, examples of the policy which it is necessary to avoid.*

Their first duty, however, was to put down actual disturbances, and vindicate the insulted authority of the laws. This, we hope, will be done with no more severity than, in the eyes of reflecting and dispassionate Statesmen, the occasion requires. In punishing violence—in repressing crime—we trust, they will never forget the exciting cause to popular commotion, in the misery of the great mass of the labouring classes of this country, and the withdrawal of all hope of peaceable and constitutional redress, last session, by closing

* How strange and lamentable that the Whig Ministers, with the fate of the preceding Government fresh in their recollection, should have bent all their energies to the punishment of a people driven to desperation by distress, and have taken no steps to enquire into, and remove, *the causes* of discontent and commotion!—Ed.

the doors of parliament against their complaints and supplications. The country must be tranquillized before its condition can be improved; but that can be more effectually done by a humane and judicious firmness, than by an avenging severity.

Our opinion of the sanguinary character of our Criminal Laws is well known; our aversion to the multiplicity of capital punishments which disgrace our civilization will never cease to be proclaimed, until the punishments which the law awards to offences, are made more consistent with the dictates of considerate justice, and the moral distinctions of guilt. The public have been told that the present Ministers contemplate a humane modification of the Criminal Laws:—such a statement has gone forth to the world, through the press, and it has not received any contradiction. Whether Government really intend to originate such a plan, we cannot take upon ourselves to affirm; but we can state, with confidence, that they are disposed to give any measure of the sort the most favourable consideration.

Indeed, if the principles of politicians, *when out of power*, be any pledge of their conduct *when in office*, they stand pledged to such a measure, by their opposition to the Forgery Bill of Sir Robert PEEL, in the last session, when the eloquence of Lord BROUGHAM, Sir James MACKINTOSH, and other advocates of enlightened principles, gained one of the greatest moral victories that had ever been achieved in the House of Commons. It is true, Lord LYNDHURST led on the majority in the House of Lords, and recovered for legal barbarism the ground which it had lost. But when public opinion gets in advance of the legislature, it is impossible to roll it back by any triumph which obstinate prejudice, sophistry, or corrupt influence can obtain.

It is not on the eve of a proposed amelioration of the Criminal Law we should expect that Government would think it either just or salutary to gratify those who delight in acts of vengeance, by a ruthless exhibition of sanguinary

examples. The Earl of FARNHAM said, the other night, in the House of Lords, that 'the best way that Government could take to put down disturbances, was by correcting the grievances, and relieving the distresses that gave rise to them.' —That is certainly the only way to re-establish order on a firm foundation, and to produce permanent tranquillity. Any immediate quiet effected by the terror of the law alone, if not followed up by remedial measures, can only be of a delusive and temporary nature.

Our Judges are upright and impartial in the administration of the laws; but they have been educated in a system which makes them too familiar with the infliction of death—and we know what a tyrannical power habit exercises over human nature. We call upon them and the Government to consider most attentively the mitigating circumstance, in all the cases of breaking machinery of which we have heard—of a people driven by want to desperation, *and shedding no blood!* We entreat those who sit in judgment on them, not to teach them lessons of cruelty by examples of extermination. We entreat them, in the name of that holy, that compassionate religion, whose advent we are now about to celebrate, to administer justice in mercy!—*Morning Herald, Friday, December* 24, 1830.

The consideration of the punishment of the Machine-breakers continued.

"Where the axe falls, it shall assuredly smite."

We regret to observe that the labours of the Special Commission appointed to try the rioters at Winchester, are not likely to have as bloodless a result as those of the tribunal that sat in judgment, about the same time, on the crimes of the authors of the treasonable massacres of Paris.

The tumultuous assembling of large bodies of the people, to raise, by compulsory means, the rate of wages—the riot-

ous breaking of machines which supersede human labour—and other acts of popular disturbance, are, no doubt, serious and grave offences, not to be allowed to go unpunished, even when they have their origin, as in the present case, in severe and unexampled distress, without incurring the risk of the subversion of all law and order; but still it must be admitted that those offences are far inferior in danger and enormity to that crime which is properly called high treason, and which is a deliberate attempt, not merely to get rid of some local grievance by a demonstration of force, but to overturn the Government and Constitution of the State, by sacrificing the life of the supreme Magistrate, or the liberties of the people.

The ex-Ministers of France were convicted of high treason against the State, committed under circumstances the most revolting and atrocious that can be well conceived. They had all solemnly sworn to the observance of that Charter, which, from the moment of taking the oath, they conspired to destroy. They had all had experience of the calamities which despotism had brought upon their country, and the almost total ruin which lawless power had occasioned; and yet they prepared, by every means within their reach, to restore that arbitrary form of Government which produced, by its intolerable oppression, the revolution of 1789. They began their crime in perjury, and they ended it in massacre; and yet, in the midst of a triumphant and justly exasperated people, thousands of whom had lost their relatives and friends by the sabres and grape-shot which, under the orders of those remorseless conspirators, strewed the streets of Paris with carnage, their miserable lives were spared: —justice accepted of a secondary punishment—the grave into which their victims fell, was not opened to receive them —they were not hurried into the presence of their Creator with all the weight of unrepented blood upon their souls: the doom that withdraws them from the execrations of the world, gives them the opportunity of endeavouring to make their peace with Heaven before they appear at that

tribunal where earthly JUDGES, as well as those who have trembled at their bar, shall one day receive judgment.

The sentence which spared the lives of those criminals, was received with approbation in this country.—* * * * * Shall we, who approve of the sentence which spares the lives of the French ex-Ministers, convicted of the greatest crime known to civil society, send rioters to the scaffold, who have acted under delusion, ignorance, and distress, and who, however great their offences, have not, under the influence of revenge or excitement, sacrificed a single life?

We see it stated that SIX men, who were the most active among the rioters in Hampshire, *are ordered for execution.* None of these, except one,* we believe, offered any serious personal violence. Why then take the lives of so many? The very circumstance which made their offences most dangerous, and most necessary to be speedily suppressed, constituted their palliation—the general excitement and the distress which made disturbance contagious.

Most of the members of the present Government, when in Opposition, admitted our criminal code to be vindictive and inhuman, by its multiplicity of capital punishments. We did not therefore expect such severe examples would be made in the very commencement of their Administration. We did believe they would not allow the French nation to leave us behind in the race of humanity and civilization. We hoped they would put down disturbance without sacrificing life, and prove that it is the privilege of Statesmen of superior intelligence, to make *moderation* a more effective auxiliary in the restoration of order, than *that destroying vengeance,* in which men of weaker understanding place all their trust. We thought they were aware that the reign of terror is short, and passes away; but that judicious mercy, particularly in the case of crimes of sudden excitement, appeals to the reason, and subdues the heart.—*Morning Herald, Monday, January* 3, 1831.

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* The convict *Cooke,* who had *aimed* a blow at Mr. Bingham BARING.

Nine Machine-breakers in two Counties left for execution— Appeal on their behalf to the mercy of the Crown.

"Where the axe falls, it shall assuredly smite."

The fate of the six unfortunate men left for execution at Winchester,* and three at Reading,† under the Special

* SEVERITY OF SENTENCES IN HAMPSHIRE.

(From the *Hampshire Telegraph.*)

'WINCHESTER, JAN. 1.—The Special Assizes terminated on 'Thursday evening, far more severely for the prisoners than was ever 'contemplated by themselves or the public. Six unfortunate men are 'to expiate their offences with their blood; numbers are to be banished, 'some for ever, and some for terms of years; and the remainder of 'those convicted are doomed to various periods of imprisonment and 'hard labour. A great number were discharged on their own recog- 'nizances, and others without being put on their trial. Many of them 'were tried *several times* on different indictments for offences committed 'on the same day, in the same society, and *under the same excitement*. 'The public feeling is decidedly against the wholesale sacrifice of life 'denounced in the cases above alluded to; and a petition is now in 'course of signature, praying the six men now under sentence of death, 'may be reprieved, and transported for life.—The whole of them ex- 'press the utmost contrition for their conduct; and the example would 'surely be equally effective, as regards the only legitimate object of 'all punishment, and far less revolting, if their sentences were com- 'muted to perpetual banishment, instead of offering them up a bloody 'sacrifice to laws scarcely known, and ill understood, for offences com- 'mitted under circumstances of unheard-of excitement—in the majority 'of cases, without deliberation, motive, or malice, and in total igno- 'rance of the dreadful consequences, immediate or remote, of the acts 'committed. The petition will, no doubt, be numerously signed; and 'it is hoped His Majesty's servants will lend a favourable ear to such 'an appeal from the sympathy and humanity of the public, for whom 'they officiate.'—[See note *, p. 93.]

† 'On Thursday the death-warrant of the three unhappy convicts 'was received at the gaol at Reading. The day appointed for the 'execution is Tuesday next. The most intense anxiety to save the 'lives of the unfortunate men has been shewn throughout the county. 'Petitions from Henley, Newbury, &c. have been forwarded to the 'Secretary of State. Upwards of *ten thousand* inhabitants of Reading

Commissions, excites a stronger and more general feeling of pain and sympathy in the public mind than any event connected with the strict administration of penal justice within our remembrance. Nor is this to be wondered at; for the people of England are not an inhuman people, and cannot be reconciled to the miserable spectacles which are the consequence of the unrelenting enforcement of sanguinary laws. Besides, they reflect upon the causes which led to the crimes for which the lives of those men are declared to be forfeited to the law. They find in those causes, not what can justify violence on the part of any class of the people, but a great deal that ought to operate in mitigation of the punishment which the law has decreed to the offences, of which the individuals now awaiting their doom have been convicted.

We will not now enter into political considerations connected with this unpleasant subject; but we do say that political causes have led to those crimes; and that, for whatever blood shall be shed judicially, or otherwise, Statesmen and Legislators will be deeply responsible—responsible before a higher tribunal than that of man, where the actions of those, upon whose conduct the happiness or misery of millions of human beings depended, will be tried by an INFALLIBLE JUDGE, and the hand of Omniscience itself hold the balance of justice.

But, whatever may have been the precise nature of the political errors which have led to this calamitous result, there is no unprejudiced person in the community who doubts that distress was the *immediate* cause of the disorders which the Special Commissions have been appointed to punish. Distress produced excitement, and excitement led to crime. But acts of disorder, and even of petty plunder, committed under such circumstances, are of a very different character of guilt, at least in a moral point of view, from

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'and its vicinity also signe a petition to the same effect; but we hear 'there is not the slightes chance of the sentence being commuted.—'*Berkshire Chronicle.*'

those violations of the laws of order and property, which are the result of a cold and deliberate depravity of disposition. Such acts must, indeed, be punished; but, if punished in a manner that causes the public detestation of the offence to merge in sympathy for the fate of the offender, the example can have no salutary result.

For high treason and murder, men can only suffer death; but the rioters and breakers of machines in the late disturbances have not done any thing to confound them in the guilt of the traitor or murderer, and should not be confounded in their punishment. It is true, that when the advocates of sanguinary examples are driven from every position of morality, reason, and religion, they entrench themselves behind that of *expediency*. But *expediency* was of the doctrine of PILATE, who, on that principle, which is so much in acceptance among modern Statesmen, put ONE, in whom he 'found no fault,' to death, in preference to the murderer *Barabbas*. There is no crime in statesmanship, no vice in legislation, no error in the administration of justice, that "*expediency*" cannot sanction! It is the doctrine invented by knaves to impose upon fools. When men abandon the immutable principles that distinguish right from wrong, and tell us that it is *expedient* to do a thing which it is not *right* to do, we think very contemptuously of such men's understandings, or very unfavourably of their hearts: for either folly or dishonesty is the source of their actions.

The late Ministers of France thought it *expedient* to subvert the Charter, though they were well aware that it was illegal to make the attempt. They sacrificed thousands of lives in pursuance of their wicked intentions; yet the justice of their country has *spared their lives;* and the very persons who approve of the execution of the rioters in the Counties of Hants and Berks, approved of the sentence which inflicted only a secondary punishment on the greatest criminals that have held up their hands at the bar of public justice in

modern times! How can men reconcile themselves to such contradictions?

If the crimes of the ex-Ministers of France had their origin in political considerations, so had those of the English rioters. But the ex-Ministers of France sacrificed thousands of human beings to their ruthless ambition, and the rioters in England did not destroy a single life. Even the doctrine of expediency does not apply in this case; for, as public opinion is against the infliction of *death*, it would answer no conceivable purpose to inflict it. The survivors will hear more pity expressed for the fate of their comrades than horror at their offence;—they will hear the merciless enforcement of the law condemned by those whose opinions have influence upon their own, and all the salutary effect of example will be lost. It is therefore neither *right* nor *expedient* that the intended executions should take place; but it is expedient that the *moral* force of another sort of example should be given to the people. The example we mean does not cause any tears to be shed, or bring painful recollections to the conscience;—it makes no wife a widow, and no children fatherless;—above all, it does not teach the people the lessons of cruelty and revenge by spectacles of blood.

We speak of the example of mercy! To that noblest prerogative of the Crown of England we now appeal. Graciousness and affability of manner become a King; but his most enduring popularity is to be derived from administering justice in mercy. The *justice* of the law may be executed by *many;* but the mercy which governs, controuls, tempers, and, we may add, *civilizes* the law, is entrusted but to *one*. It resides in the breast of a KING—it is the noblest and most beautiful flower of his constitutional pre-eminence!—*Morning Herald, Monday, January* 10, 1831.

Another Appeal on behalf of the convicted Machine-breakers—
—Petitions for Mercy.

" Where the axe falls, it shall assuredly smite."

The short time which has now to elapse before the six rioters at Winchester, who lie under sentence of death, will perish on the scaffold, unless the mercy of the Prerogative interpose between the stern law and its victims, induces us to make one more effort to call forth the saving energy of that mercy which is the most beautiful attribute of the kingly power, and which

' becomes
' The sceptred monarch better than his crown.'

In making this appeal, we but express the feelings and wishes of thousands and thousands of intelligent and considerate people,* who have quite as much abhorrence of acts of popular violence and outrage as the few who thirst for sanguinary examples. But they object to the taking the lives of these rioters, because, in the first place, the law is too severe, and ought not, at a time when the public are looking forward to its amendment, to be carried into unrelenting execution. Because, secondly, the crimes in the present instance have had their origin in deep and extensive *distress*, and were committed under the influence of ignorance, delusion, and excitement, subsequently to repeated and vain calls upon the legislature for its interference in the way of enquiry and relief. Because, thirdly, the disturbances, criminal as they were, did not cause *the loss of a single life;* and, if those executions take place, all the bloodshed caused by the riots, will be on the side of the law. Because,

* *The six Winchester prisoners sentenced to die on Saturday, Jan.* 15.—A gentleman from Hampshire, whose business, as a wool-stapler, gives him extensive communication with the *farmers*, is now in London: he states that, from one end of the county to the other, there is a *strong feeling among the farmers* against putting any of these men [machine-breakers] *to death.* This quite accords with an article we lately copied from the *Hampshire Telegraph.—Morning Herald, January* 8, 1831.

fourthly, *public opinion* is decidedly against the intended sacrifice of life; and, if the offenders die, they will suffer amid general commiseration, which will extenuate their guilt in consequence of the severity of the atonement.

For these reasons, we say, thousands and thousands of intelligent and considerate people wish the sword of the law, ere its exterminating edge descends, to be averted by the arm of Mercy. When people are driven to desperation by distress, and that, too, distress against which no foresight could guard them, and from which no industry could protect, their actions may be criminal and dangerous, but they have not the taint of systematic depravity and hardened guilt.

When the labouring population rose formerly under the guidance of such leaders as a Tyler, a Cade, or a Kett, they avenged their grievances in the blood of their real or supposed oppressors; and, when vanquished, they could but suffer death, like the modern rioters, who had it frequently *in their power* to take away life, under feelings of great exasperation, *yet refrained*, and have not in their last moments to accuse themselves with blood-guiltiness towards any one of those whom they regarded as their worst enemies.

The suffering and infuriate people have, indeed, in a wonderful manner, respected the *sacredness of life*. Let not the laws be so executed as to make them at any future time think lightly of shedding the blood of those who, in the real or fancied character of oppressors, may fall within their power.

The lives of the ex-Ministers of France have been spared; —the rioters and machine-breakers of England are innocence itself compared with them. Is France to teach us lessons in Christianity and civilization?—and is England to rebuke the mild spirit of criminal justice in France by giving unjust and unnecessary examples of extermination? We say *unjust;* because the mitigating circumstances under which the offences have been committed, if taken into the account, would, of themselves, constitute a *recommendation*

to mercy; and we say *unnecessary*, because the disturbances and machine-breaking, (which are quite distinct from the crimes of the incendiaries,) are now *put down*, and the destruction of life will have a greater tendency to irritate than to pacify.

Can there be a more decisive proof of the impolicy of sacrificing life under such circumstances, than the fact, that every place of any importance in the county where the offences of the Winchester convicts have been perpetrated, have presented petitions for mitigation of punishment—namely, Winchester,* Portsmouth, Romsey, Southampton, Gosport, Basingstoke, Whitchurch, and other towns; while in London a petition to the same effect was, in twenty hours, signed by upwards of six thousand householders? Can mercy, so advocated, be denied?—*Morning Herald, Thursday, January* 13, 1831.

Sentences on the ex-Ministers of France, and those on the Machine-breakers, contrasted.

The axe *fell*, and *has smitten.*

The bloodless triumph of justice, of which France has given a great example, our rulers—even our Whig rulers—have not thought it *expedient* to imitate.† Our Statesmen and our Legislators applauded the clemency abroad which they disclaimed at home—they admired the forbearance in others which they have themselves abjured—they gave to the noblest act of magnanimity which has distinguished a nation in modern times, the hollow and barren praise which has not ripened, on their part, into any generous rivalry in virtue!

Yet how much more culpable were the criminals whose

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* 'Every tradesman in Winchester, without an exception, signed that petition.'—*(Correspondence of a Morning Paper.)*—See note †, p. 87, also.

† *Winterborne*, one of the convicts, had been executed at Reading, and two, *Cooper* and *Cooke*, at Winchester.

lives were spared in France, than those who have just perished, and are about to perish, on the scaffold in England! The former, rich, powerful, and educated, had no temptation to crime but that depravity of heart which *sacrifices every moral consideration to a guilty ambition*;—the latter, poor, ignorant, deluded, were impelled by misery, and repeated denials of peaceable redress, into acts of violence and disorder, which, with all their legal guilt, had not the *moral* aggravation of being stained by the *effusion of blood*. How the crimes of these men sink in importance, both in a moral and social point of view, when contrasted with those of the ex-Ministers of France!—the one set of culprits attacking certain novel inventions in machinery, as the means of depriving them of their daily bread; the other subverting, in the mere wantonness of power, the very foundations of civil society:—the one respecting life in the very frenzy of their excitement; the other cutting down or sweeping away masses of their fellow-citizens with the sabre and cannon-balls, and making thousands of wives widows, and children fatherless!

It may, indeed, be said that the ex-Ministers were saved in spite of the French populace. We believe, to a certain extent, that is true, and that there were thousands in Paris who thought it only an act of justice that the life of POLIGNAC, the chief of this more than Cataline conspiracy, should atone for his offence:—but who, we ask, were they that preserved the lives of the criminals from the summary vengeance with which they were threatened? Were they not the People themselves? Were they not the National Guards—the People of Paris, *with arms in their hands*, which they used to protect the lives of men against whose ferocious legions they fought in the conflicts of July? Here are the French People, in their power, setting an example of generous forbearance, which the Statesmen and Legislators of England, in their pretensions to superior wisdom and morality, decline to imitate.

The French have punished crime, and secured public order, *without shedding blood*, and have thereby achieved a moral victory, which consecrates, with the purest radiance of humanity, the glory of their political triumph. The English Government have indeed lost a noble opportunity of preventing this example of *civilized justice* from being as solitary as it is splendid—an opportunity of which, we may say, the national voice called upon them to take advantage; but they have denied mercy to the intercession of a whole people—they have resorted to the sanguinary enforcement of laws, which, as late as last session, when the members of the present Government were in opposition, they loudly and indignantly condemned.—Do they mean, now that they possess power, to alter the laws which they then described as cruel and vindictive? If they do, was it consistent to carry them into severe execution on the eve of their abolition?—If they do not, what are we to say of the reality of their avowed principles, and the sincerity of their professions?

Since we called the public attention to this subject before, two more wretched men, whose crime was the breaking of machinery in paper-mills, have been left for execution at Aylesbury. The heart sickens at these sacrifices, and particularly under a *Liberal* Administration. Can no secondary punishment suffice in these cases as a substitute for blood?—or must the noble functions of justice be still degraded to the offices of a base expediency?

We are not satisfied that *some* of the criminals devoted to death, should have been rescued from destruction: we would have saved the blood of *all*, and thereby have gained for the Government a triumph in consonance with their former principles, and which might be to them hereafter a source of pure and conscientious pleasure. The crime was common, and a common mercy would have been hailed by the country with satisfaction. It would have rendered the laws more respected, the Monarch more popular, and would have increased the moral influence, and consequently

strengthened the power, of the responsible advisers of the Crown.

An evening contemporary (*The Star*), in an article on this subject last night, says—'Under worse Administrations, and circumstances less venial, we had seen some five or six leaders brought to trial as a warning, and, vengeance being arrested by compassion, the rest, after due admonition, were, without prejudice, set at large, on bail, on their recognizances. In the present case, we must confess we have been disappointed; and in making this declaration, we are satisfied we echo the feelings of nearly the whole community.'—This is quite true. We never recollect so strong and general an expression of sympathy in favour of the deluded victims of the law as in the present case; and we deeply regret that Statesmen who had often denounced the sanguinary principles of the law, should have discarded their own doctrines in practice, and rejected that national appeal for mercy.—*Morning Herald, Tuesday, January* 18, 1831.

Mitigation of the punishment of some of the Machine-breakers.

Having taken an earnest and anxious part in recommending that the lives of the remaining men left for execution under the Special Commission, should be spared, we feel a corresponding satisfaction at finding that both *Lusk* and *Withers*, whose awful doom had been pronounced at Salisbury under the most tragical circumstances, have been reprieved; and that respites have been forwarded to Aylesbury, in stay of the execution of *Blizzard* and *Sarney*, with a view to a commutation of punishment.

This is a circumstance gratifying to humanity, and will make a more salutary and moral impression on the classes of distressed labourers and artizans, who engaged in the late disturbances, than could have been produced by the effusion of blood.

Government deserve credit for at length attending to

the voice of public opinion on this subject, and advising the Sovereign to interpose the noblest attribute of the prerogative, between so many victims and the uplifted axe of the stern law. It is well even for a King to be able to say, in that fated crisis to which all must submit, and when the recollection of power, mercifully exercised, administers a balm to the spirit which all the jewels of the crown could not purchase—'The blessing of him that was ready to perish, came upon me.' Such blessings ascend not to heaven in vain!

Of the convict *Holdaway* we have heard nothing, but presume that he will not *now* be made a solitary exception to the lenity of the Crown.

The taking of a single life in consequence of the late disturbances is to be regretted. The laws that confound the offences of rioters and machine-breakers with the guilt of the deliberate murderer are not to be justified on any sound principle of justice, policy, or morals.

It is time for legislators to teach the people that life is too sacred to be made a mere political sacrifice for offences that imply no heinous depravity of heart—too noble a gift of the Creator to be set at no higher value than the price of a rag-grinding machine or a spinning-jenny! It is time to humanize the law of a country which has had the benefit of the civilizing influence of the Gospel for at least twelve hundred years! While science—while literature—while the arts that grace and embellish life, have advanced to a high degree of excellence, have our moral faculties been asleep, that justice should, even in the nineteenth century, appear in unnatural alliance with the principles of barbarism?

How long shall England possess the disgraceful distinction of having a collection of criminal laws more sanguinary than those of any other country in Europe, with the exception, perhaps, of Turkey, where life has no more value than the wantonness and caprice of a benighted despotism chooses to assign to it, and where the tyrant's will is law?

Until the legislature interposes to reform effectually the criminal laws of England, we hope they will be, for the future, *so administered*, as to make their practice more consistent with the principles of Christian civilization, and prepare the mind for that judicious and enlightened change which public opinion demands and expects.—*Morn. Herald, Tuesday, January 25*, 1831.

Case of Ann Pearman Pain, to be sentenced to Death for Forgery.

The following paragraph, copied from the *Kentish Chronicle*, appeared in our paper a few days ago:—

'*Ann Pearman Pain*, who was convicted of forgery at the late 'Canterbury Sessions, and upon whom sentence was not passed, in 'consequence of her pregnancy, was last week delivered of a fine boy 'in Westgate gaol. The poor creature is doing extremely well, and 'appears totally ignorant of the awful situation in which she is placed.'

This unfortunate woman is one of the victims of our *mitigated* law of forgery.

Had the Administration under which this Bill passed, continued in power, we confess we doubt whether even they would have dared, in spite of the resolutions of the House of Commons, to advise the Sovereign to carry it into execution; and therefore we cannot believe the present Government, composed as it is of the men who led on the Opposition that threw out the capital provisions of that Bill on its third reading, will ever take upon themselves the awful responsibility of taking away life under the sanction of an Act whose principles they so indignantly repudiated.

We are the more decidedly of that opinion, when we consider that the foremost man among that Opposition was the present Lord Chancellor, who never exercised his great and splendid talents in debate with more energy and effect than in his eloquent exposure of the inhuman, impolitic, and inefficient provisions of a Bill, which, in punishing crime, was itself a crime against civilized legislation! No

—we repeat it—we cannot believe that the present Ministers will advise the Crown to allow this law to take effect on the unfortunate woman in question, or on any other convict. They have it in their power now to apply to the offence those secondary punishments of which they were the advocates.

We cannot believe they will think it their duty to enforce, in their power, the extreme penalties of a law which, when out of office, they described as disgraceful to the age and country. In other Ministers its enforcement might be attributed to ignorance and obstinate prejudice;—in *them* it would be a 'sin against knowledge,' and no better than judicial murder: and surely the instructive result of the recent trials for high treason in Paris will not make them more enamoured than they were before of sanguinary examples.—*Morning Herald, Thursday, January* 27, 1831.

Indiscriminate severity of the Law in cases of Arson—the guilt of Convicts for this crime sometimes very doubtful.

Within a few days four men have suffered death for the crime of *arson* upon the Home Circuit. Of these there were two, of whose guilt no doubt could be entertained, and whose dying declarations were in confirmation of the verdict. Of the two others we think the proofs of guilt not so conclusive as to warrant the carrying into effect the extreme penalty of the law, without further enquiry. In the last-mentioned cases the wretched sufferers persisted in protestations of their innocence to the last.

One of them, *Ewen*, who was tried at Chelmsford, for setting fire to a stack and barn at Rayleigh, was convicted, principally, upon the evidence of a person who stood charged with being accessary to the same crime. This man deposed that the prisoner, without any conceivable inducement, disclosed to him what he kept a secret from every body else—namely, that he had perpetrated the offence. Besides his testimony, there was no evidence against the

prisoner, except some circumstances which only amounted to a slight case of suspicion.

The testimony of a person who stands himself in the situation of an accused or suspected criminal, and who has consequently a very intelligible motive for endeavouring to fix the guilt upon another, should be received, in every case, with great caution, and ought never to be considered of sufficient weight by a Jury to justify a verdict of conviction—especially on a charge that consigns a fellow-creature to an ignominious death—unless that testimony be corroborated, in at least some material facts, by the evidence of unimpeached witnesses. The records of the administration of criminal justice in this country, notwithstanding the learning and purity of our Judges, contain many instructive instances of the fatal errors into which Courts and Juries have been led, by giving too easy a credit to the artful and profligate statements of approvers, and others charged with crimes, or instigated by the hope of reward, or pardon, or blood-money, and who, besides a badness of character, which hardly allows us to presume that they have any regard for the sanctity of an oath, are further disentitled to belief, by having a direct and positive interest in the conviction of others.

We do not say that, in this case, the witness on whose evidence the conviction was obtained, did not state that which was true. We only say that the evidence was given under circumstances which were not calculated to satisfy public opinion as to the man's guilt; and when the public have a doubt of the propriety of the verdict, the infliction of *death*, even when a crime is generally supposed to deserve it, does not operate as a salutary example; for the horror of the crime is lost in commiseration for the person who is suspected of being the victim of an erroneous decision.*

* Two gentlemen of Chelmsford, who went over to Rayleigh, and minutely investigated the circumstances of the case, and examined the cottage in which *Ewen* had lodged, were of the opinion, that he was not

We understand that there was an application made to the Home Office relative to this unfortunate man, and that Lord MELBOURNE, on the report of the Judge, declined to interfere. Such cases make us regret that there is not here, as in France, a Court of Criminal Revision, of which the law would, as a matter of right, give the prisoner the benefit, on his merely saying, 'I appeal.'

The other case of doubt is that of *Dyke*, who suffered on

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guilty of the crime for which he had suffered death. See also some documents published in the *Morning Herald* of Saturday, Jan. 8, 1831, which we have not room to insert. The opinion entertained in the county, of the man's innocence, will appear by the following extract

'FROM THE ESSEX MERCURY.

'A painful sensation has been created in this county respecting the 'case of an unhappy man who lately suffered the last penalty of the 'law. The belief in the innocence of *Ewen*, the unfortunate man who 'was executed on the charge of having wilfully set fire to the barn of 'Mr. Sach, of Rayleigh, continues to gain ground, very generally, 'among the inhabitants in the neighbourhood; and this belief is 'founded upon very rational conclusions. The investigation which 'has humanely, though now uselessly, been undertaken by some 'gentlemen, has elicited many circumstances in support of the truth 'of *Ewen's* statement, and to the prejudice of the criminating wit-'nesses. Perhaps—though we mean not the most remote imputation 'upon the judicial integrity of the Learned Judge who tried the case '—perhaps the result might have been different, had a Judge of 'greater experience tried such an important case. The present was 'the first case, involving a question of life and death on circumstantial 'evidence, which Mr. Justice TAUNTON, as one of the Judges of the 'land, had to decide. Had this crime been only a solitary instance, 'and not of that character which was spreading dismay over the king-'dom, we could almost imagine that the man's statement would have 'raised so much natural doubt as to his guilt, that the law would have 'taken the safer side. There are times and seasons when the utmost 'integrity of heart and purpose cannot defend the mind of man from 'receiving a bias; and it may be another illustration of the truth of 'this proposition, that *Ewen's* life has been sacrificed.'

Friday at Penenden-heath. It was considered of such importance that he should make a confession of his guilt, that the chaplain said to him *on the scaffold*,—'Now you have come to the worst, and there is no chance of escape, do tell the truth.' The other prisoners had admitted their participation in the offences of which they were convicted; but *Dyke's* reply was,—'I am innocent.' He afterwards read a paper, in which he declared that a man and his wife, who were the principal witnesses against him, had sworn falsely, and exhorted all who heard him, to 'mind the ninth commandment.'

It is difficult, if not impossible, in those dying declarations, to distinguish the firmness of conscious innocence from the obstinacy of a depraved heart. We only say that this was a case for enquiry. The witnesses whom he charged with swearing falsely, might have the most inflexible regard for truth; but we must, at the same time, recollect that considerable *rewards* have been offered for the conviction of offenders; and though the witnesses in this case might be exceedingly pure and honest, there are others who would swear away the life of any man for a valuable consideration!

We have, therefore, on principle, a great objection to procuring evidence to affect men's lives by the offer of tempting sums of money. In a civil action, and where the rights of property only are at stake, no man is allowed to give evidence who has the least possible *pecuniary interest* in the result. Why should *life* be held less sacred than *property*? Why should evidence, tainted by self-interest, be admitted in the one case, which would be instantly rejected in the other?

Among the culprits who stand condemned for arson is a youth of eighteen, named *Thomas Goodman*, who was convicted, at Lewes, of setting fire to a stack and a barn, and who is ordered for execution on Saturday. His youth, and some other circumstances, which tend to shew that he was rather a dupe than a person of original malignity of dis-

position, have excited a strong feeling in his favour, though there can be no doubt whatever of his guilt, inasmuch as he has himself fully admitted it. We are informed that when the verdict was returned, there was a loud expression of dissatisfaction throughout the Court; not from any persuasion of his innocence entertained at the time, but of abhorrence of the penalty which the spectators knew would follow such a verdict. Nobody can doubt that he is a fit subject for punishment, though it is not quite so clear that his punishment should be *extermination*.

Besides, the unfortunate young man was strongly *recommended to mercy by the Jury, on account of his youth*—a recommendation which ought always to be attended to, as, in capital cases, it expresses the solemn opinion of the tribunal that finds the prisoner guilty, that he ought *not to suffer death*.

We hope Government will take this case into their serious consideration.* It is impolitic in any case to go against the recommendation of a Jury; because, by making the *extension of mercy doubtful*, under circumstances which Juries think require it, it may lead to those 'pious perjuries' in the Jury-box, which prevent the possibility of too severe a punishment, by inducing verdicts of *acquittal* where the evidence of guilt is clear and incontrovertible.†—*Morning Herald, Thursday, December* 30, 1830.

Barbarous punishment for Political Offences in PORTUGAL.

The lesson of mercy which the French people gave the world in the case of the guilty ex-Ministers of the dethroned

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* With regard to the case of *Thomas Goodman*, who was condemned for arson at the Sussex Assizes, he received the favourable consideration of Government, and his sentence was commuted to transportation for life.—*Sussex Advertiser*.

† The reader will find a case in point in the note at page 28.

King, has not tended in the least to humanize the spirit that presides over the political tribunals of despotism. There vindictive Cruelty, profaning the sacred name of Justice, takes her stand, and for real or imaginary offences against power, asks for blood, as the only fitting peace-offering to despotic wrath, and delights in multiplying sanguinary examples.

Clemency is never considered a virtue by a certain description of rulers of mankind, until they are reduced to the necessity of soliciting its interposition on behalf of themselves, or the minions of their tyrannical power. Even the ex-King of France, after deluging the streets of Paris with the blood of his subjects, became an advocate for the godlike attribute of mercy, when the infatuated instruments of his guilty ambition were the culprits for whom its saving protection was implored. It might have been well, then, if he could have pointed to any signal examples of Royal mercy to persons convicted of treason, which either his own reign, or that of his predecessor, had afforded.

The French people had not forgotten the fate of NEY and LABADOYERE—of BERTHON and BORIES, and others; and yet they spared the regal malefactors who were convicted of treason against the nation—of treason attended with more aggravating circumstances than any which modern history has recorded.

The usurper of Portugal seems determined to establish his title to the legitimate honours of 'Divine right,' by equalling any thing that ancient or modern tyrants have done in the way of vindictive and barbarous cruelty. Yet, if to-morrow he were hurled, by an act of Divine retribution, from the seat of his demoniac authority, and were to stand on trial for his crimes at the bar of public justice, we should hear of every Government in Europe interceding in his behalf, to save him from the condign punishment of his enormities, as in the case of the ex-Ministers, to whom France owes the carnage and the triumph of her revolution.

Is the humanity of Governments only that one-eyed virtue which watches exclusively over the salvation of regal rebels? Shall MIGUEL and FERDINAND rival NERO and CALIGULA in the ferocious and wholesale butchery of cold revenge under judicial forms?—and shall none of those statesmen, who, when the lives of the French ex-Ministers were in peril, professed themselves adverse to the shedding of blood for political offences, interpose, to recommend moderation in their vengeance?

The latest exploit which we hear of FERDINAND VII, is the putting to death, in one town in his dominions, forty-five political offenders, with as little compunction as if they were so many dogs. If the Constitutionalists had succeeded, and committed such a massacre in cold blood, what an outcry would have been raised against the 'sanguinary spirit of 'democracy!' But we dare say this work of blood will only be looked at as an instance of energy in the Sovereign, whose malignant power broods, like a moral pestilence, over degraded Spain.*

Don MIGUEL has also had his human sacrifices, and though not, in the present instance, in as great a number as his relation of the Escurial, yet the atrocity of the circumstances may suffice at the present, as making ample amends for the deficiency of victims. Only seven of the persons charged with participation in his pretended plot at Lisbon, have yet fallen on the scaffold; but the 'energy' of the tyrant was carried to the highest point in this:—he cared not whether they were guilty or innocent of any political offence whatever;—he had thought proper to accuse them, and that was sufficient reason why they should perish, and why any Judge, who might dare to act upon proofs of their innocence, should be denounced as a Constitutionalist!

* Little was it supposed, when this passage was penned, that the *Liberals* of Spain, on becoming the rulers of that country, would have rivalled, if not surpassed, by acts of cold-blooded vengeance, the lessons of cruelty taught them by FERDINAND.

Besides, if we look at the style in which the execution was conducted, it speaks highly for the degree of ferocious perfection to which the 'pious MIGUEL' has brought the art of political butchery. Only think of the dramatic effect of the executioner, when wearied with the work of strangulation, seating himself on the fatal platform, and coolly smoking a cigar, and then refreshing himself for the further operations of his disgusting office by quaffing a bottle of wine!—When regal power familiarizes the public mind with such scenes, need we ask how a populace comes to be barbarized, and where they learn those lessons of revenge which are sometimes fatally retaliated upon their rulers?——*Morning Herald, Thursday, March* 31, 1831.*

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* LISBON, MARCH 19, 1831.

Lisbon has again had the misfortune to exhibit the dreadful effects of absolutism; and the young tyrant (old in crimes) has again satiated his cruel appetite by the cold and deliberate murder (in a most frightful and disgusting way) of seven respectable, and no doubt innocent, inhabitants of this city. Three of them were military men.

The special Commission ended on Friday, the 11th instant. A majority of the JUDGES declared there was *not any evidence made out of crime for which they ought to suffer death.* To this Don MIGUEL returned for answer that they were *Constitutionalists*, and *should suffer.* From this decree it would, they knew, be vain to make any appeal; for, as in the case of the nine students executed last year, though three of them proved a clear *alibi*, as they were intimate with those proved to be present at the affray, MIGUEL ordered the whole to be executed. Had any of the JUDGES stood out, he would lose his place, and be denounced as a Constitutionalist.

On Monday Don MIGUEL took his departure for Mafra, 24 miles from Lisbon, to prevent solicitations for pardon. It is said that on Monday the DUKE of CADAVAL, on his knees, implored His Majesty to pardon, or even respite them:—he left the room in a violent passion. and said they should suffer at the time appointed, which was Wednesday.

During the night of Tuesday a platform was erected, about 15 feet square, in the middle of which was a strong post, and on one side

Case of Thomas Gregg, sentenced to death at the York Assizes, for Sheep-stealing.

It appears that at the York Assizes a man named *Thomas Gregg*, convicted of sheep-stealing, has been doomed to suffer the extreme penalty which our *improved* Criminal Code annexes to this crime—which is *death*.

We had hoped the time was come when an offence of this nature would be thought sufficiently atoned for by some

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of the post a seat for the unhappy men to sit upon, for the purpose of being strangled. The stage or platform was nine feet high, and underneath was placed a large iron grate, filled and surrounded by wood, pitch, and tar barrels, and other combustibles, for burning the bodies. Early in the morning a large body of troops, both horse and foot, were marched to line all the streets and avenues leading to the place of execution, which was not the usual place, but the *Casa Sodra*, a small square, surrounded on three sides by respectable houses and shops, and the fourth side by the Tagus, and one of the principal landings in the city. This square is a great place of resort in the evenings of summer for walking, by people engaged in business during the day; and was chosen on this occasion for the exhibition of this infamous and disgusting spectacle.

At *eight* o'clock the mournful procession was formed at the prison of the Lemoira, about a mile from the place of execution; the seven unhappy men, with 14 priests, one on each side of each prisoner in the centre: the prisoners bare-footed and bare-headed, dressed in long white habits, with a hood hanging down behind, each bearing a small wooden crucifix in his clasped hands, secured together by bolts at the wrists. They were strongly guarded, both before and behind. At each church they had to pass, the procession stopped to hear an exhortation, so that it was near *twelve* o'clock before they reached the fatal place. *One at a time* ascended the platform up a broad flight of steps, accompanied by two priests, as in the procession, and was immediately placed on the seat, with his back to the upright post. The hangman, a miserable wretch, walking with a crutch, then secured the legs, the arms, and body of the unhappy man with cords, and placing a short cord round his neck and round the post, he put the hood over the face, and then going behind the post, introduced a short thick stick, and, giving it four or five turns, produced strangulation. The body was then

punishment short of taking human life, and that the expression of public opinion against capital enactments would have its due weight in preventing the recurrence of those exhibitions of vindictive justice, in which the *offender* becomes an object of public sympathy, and the *law* alone is regarded with abhorrence.

But the Judge who tried the case, is reported to have given a reason for inflicting, in the present instance, upon a

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untied, and laid at a convenient distance, and *another* brought up from the foot of the scaffold, until the whole had suffered. The youngest, or least criminal, was executed first; and, as each occupied 15 to 20 minutes, the last had to endure for at least two hours the horrid sight of the sufferings of his fellow-prisoners. The mind can scarcely imagine a more dreadful state of mental suffering. When the whole were strangled, the hangman wiped his face, and seating himself in the fatal seat, coolly smoked a cigar, regaled himself with a bottle of wine, and then placing a block of wood under the neck, proceeded to cut off the heads, from which the blood flowed copiously in streams from the platform; then collecting the cords, and coolly wiping the hatchet and knife in one of the white dresses, he left the platform, first throwing the heads and bodies in a heap over the iron grate below. The fire was kindled, and in a few minutes the whole was in a blaze. By six o'clock the whole was burnt to ashes, when a gang of galley-slaves, with irons on their legs, took the ashes in hand-barrows, and threw them into the Tagus.

These seven unfortunate people solemnly declared their innocence to the last moment, some of them loudly and fearlessly. They had no connection with each other; they were simply known to entertain constitutional principles; they had sworn with thousands of others to those principles, and died martyrs to them, and to the insatiate vengeance of the tyrannical Usurper. This is clearly proved by the whole plot being mentioned in the French Papers on the 1st of January. Much sympathy is excited for the fate of these men. When the procession stopped at one of the churches, it happened to be close to the residence of one of the unfortunate men. The windows were all closed, the family having gone away the night previous: he gave a mournful look at his late happy home, and burst into a violent fit of grief:—all eyes were upon him, and the procession was soon ordered to move on. —*Morning Herald, March* 30, 1831.

sheep-stealer, the punishment which he would have awarded to a murderer. He is stated to have told the prisoner that 'the offence of cattle-stealing had become so common of late in the country, that a severe example must be made, and, in his opinion, there was no case so glaringly fit to afford that example as his.'

This way of putting the case we consider, with all submission to the learned Judge, to be founded on the doctrine of *expediency*—not on the principle of *justice*. It is but a new application of the dogma of Judge BULLER, that a man is hanged, *not because he steals a sheep, but that sheep may not be stolen*. Carry this doctrine to its full extent, and to what will it lead? To the enactment of the penalty of death for every offence whatever. For if Legislators and Judges have a right to take life in any instance, on the ground of expediency, without any consideration of the proportion of the punishment to the offence, they have a right to do it in every instance. The whole moral foundation of justice is subverted; and if a sheep-stealer is to be put to death, not because his crime deserves that terrible visitation, but because it is thought more effective in preventing others from committing similar crimes, and if it is desirable that small offences should be effectually prevented as well as great ones, there is no offence, however trivial, which ought not to incur the dreadful consequence of the forfeiture of life!

We are quite certain that Mr. Justice James PARKE,* whose disposition is naturally kind, and whose exercise of the judicial office is generally as much distinguished for moderation as intelligence, did not, at the moment when he sentenced the sheep-stealer, merely for example sake, reflect upon the train of consequences that would follow from his doctrine. An enlightened public call for a repeal of the forgery laws, and demand that the crime shall be treated, even in its worst shape, as an aggravated species of fraud, as it really is, and not as an offence of violence or

* The convict *Gregg* was subsequently *reprieved*.

blood; but the doctrine in question, if of any weight at all, must prevent the amelioration of the criminal code, not only with regard to that crime, but with regard to every other which has been made the subject of vindictive statutes, utterly at variance with the spirit of dispassionate justice.—*Morning Herald, Friday, April* 8, 1831.

A Session at the Old Bailey—Consciences of Jurors opposed to the Law.

The trials at the Old Bailey always afford a practical satire on the state of our Criminal Laws. In that Court, at the close of the sessions, the solemn ceremony of passing sentence of *death* on a large number of convicts takes place:—sometimes as many as thirty or forty persons appear at the bar together, to receive, for crimes materially differing in malignity and magnitude, the wholesale sentence of extermination. This would be a very awful proceeding, if it had not necessarily become a mockery. We say *necessarily;* because it is the inevitable result of the progress of civilization, that the laws which are so profuse of blood, should be rarely carried into effect. Enlightened opinion, controuling judicial power, saves humanity many of those disgusting spectacles of human sacrifice, for inferior crimes, which were some years ago of frequent occurrence.

If the Criminal Laws cannot be generally or uniformly executed, why are they not made conformable with the advanced spirit of civilization? If they were generally executed, every Court of criminal justice in the realm, to which belongs the power of trying capital offences, would be a great *abattoir*, or slaughter-house, in which crowds of human victims would be periodically immolated by a most compendious system of legalized *butchery*.

At the late Special Commission in *Hampshire* no less than *a hundred and one* persons were capitally convicted; but what power in the land would dare to offer up this human hecatomb to the Moloch-spirit of our Criminal Law?

It has been well observed, that the prevention of crime is better attained by *certainty* than *severity* of punishment.

Laws which cannot be uniformly executed, are bad in principle, and ineffective in practice. Under such a system offenders are naturally taught to calculate on the chances of escape; while those who are selected from the mass of capital convicts, to perish on the scaffold, suffer, not by the defined and certain authority of the law, but are too often the pitied victims of arbitrary discretion and judicial caprice. Hence Judges are loaded with an odious responsibility, and the laws are brought into contempt.

As long as enactments denouncing death to offences inferior to those of the most dangerous and enormous magnitude, disgrace our Statute-book, a large proportion of crimes, deserving of severe punishment, but not justifying the extermination of the offenders in the eyes of considerate and conscientious persons, will go *altogether unpunished,* from the repugnance of injured parties to put human life in peril, where the sentence of the law betrays more of the character of vengeance than the spirit of justice.

It is not an uncommon practice of Jurors at the present day, especially in this metropolis, to strain points of conscience in favour of humanity, and to contradict the evidence by their verdicts, in their enlightened abhorrence of exterminating punishments.

A remarkable instance of this occurred at the present sessions, in the case of a youth of sixteen, who was charged with feloniously breaking into a dwelling-house, and stealing a watch. The evidence clearly shewed that the person who stole the watch, *must have broken into the house* to obtain it. The watch was found on the prisoner, and he admitted before the magistrates that he had stolen it. This offence, though unaccompanied by any violence, or even alarm to the inmates of the house—for they did not know that a thief had entered the house until the next morning—is punishable with *death;* and the Jury not thinking it a case where life

ought to be sacrificed, returned a verdict finding the prisoner guilty—of what? only of having the watch *in his possession!* When told that this was no offence, and that they must reconsider their verdict, they, after some hesitation, returned a verdict, 'guilty of stealing,' which mitigated the crime into one not capital, as they said nothing about *breaking*. The Judges were not satisfied with this; and Lord TENTERDEN having asked, 'How could the prisoner have stolen the watch, if he did not break in?' the Jury at length returned a general verdict of guilty, recommending him to mercy.—Why should the spirit of the laws be thus at variance with the consciences of Jurors?—*Morning Herald, Saturday, April* 9, 1831.

Case of Ellis, sentenced to die, at the Old Bailey, for Housebreaking, and proved to be innocent on the eve of his execution.

The case of *Ellis*, who was to have died on a public scaffold this morning for *housebreaking*, but who was on Saturday respited, in consequence of convincing evidence being adduced of his innocence of the crime for which he was about to undergo the extreme sentence of the law, is another instance to be added to many on record, of the fallibility of human judgment where the awful question of *life* or *death* is to be solved by the decision.

Relative to the case of this person, the following paragraph was published on Saturday:—

'Seven or eight persons attended at the Guildhall Justice-'room yesterday, to swear exculpatory affidavits in favour of *Ellis*, 'who is ordered for execution. Mr. Alderman COPELAND, after 'making some enquiries, said he was at all times unwilling to 'refuse to go a little beyond the routine of his duty, where the 'object was to benefit a fellow-creature; but he must refuse to do 'so in this instance, for he saw other reasons besides that the committing Magistrate, and other county Magistrates, had refused 'to allow them to be sworn.—Application refused.'

If the reason which Alderman COPELAND is alleged to

have given, for not allowing the affidavits to be sworn, had been acted upon by all other Magisterial and Judicial Authorities, there could have been no affidavits in this case laid before the Secretary of State for the Home Department, who would not have thought it his duty to attend to unsworn statements of facts. The consequence would have been, that the law would have taken its course—the unfortunate man would have been executed—and before he was cold in his grave, his innocence would have been made known by the publication of the documents, and a barren commiseration is all that could have followed an irreparable wrong!

Notwithstanding the refusal of the worthy Alderman to swear the persons making the exculpatory affidavits, on the ground that the committing magistrate and some other magistrates had declined to swear them, it appears that some person, clothed in similar authority, did not think himself justified on such a ground to bar all access to the seat of Mercy, while so many individuals presented themselves, prepared to offer, under the solemnity of an oath, proofs of the innocence of a fellow-creature, convicted of an offence of which life is the forfeit, and already standing on the brink of an untimely grave.

We are now told that seventeen affidavits and statements were prepared, and laid at an early hour on Saturday morning before Lord MELBOURNE, who entered immediately into the investigation, and that copies of the documents were also sent to the Lord Chancellor, who had not attended the Council. The result was, that before eight o'clock on the same evening the prisoner was on his knees, returning thanks to Heaven for being rescued from the peril of impending fate, while just within the deadly grasp of the executioner.

Great credit is due to the Lord Chancellor and the Secretary for the Home Department for the humane promptitude with which they attended to this case: their own feelings will be their best reward. But let us only suppose that the prisoner had been left for execution in a remote

part of the kingdom, where the affidavits might have been hawked about from one magistrate to another, because the *committing magistrate* refused to allow them to be sworn; the interval between the order for execution, and the time at which it was to have taken place, might have expired before the documents could have been communicated to the Home Department, or submitted to the intelligent glance of that distinguished personage who fills the highest judicial office under the Crown.

In the number of the *Edinburgh Review* for last January appeared an article on the 'Punishment of death for Forgery,' which justly stigmatized the law as both sanguinary and ineffective, but, at the same time, decried, as springing from a 'perverted humanity,' all attempts to 'interfere with the 'ordinary course of criminal justice, in *particular cases* of '*capital punishment.*' It may be very well to confine philosophical disquisition to abstract principles, when practical results are less regarded than the display of ingenuity in disputation; but it is our opinion that people in general are seldom to be convinced of the viciousness of bad principles, in matters of law and government, without having their attention called to the injustice and mischief of their operation in particular instances. If Alderman M. Wood had left the four poor Irishmen to their fate, whom the blood-money men had convicted, on perjured testimony, by *due course of law*, and of whose guilt neither Judge nor Jury entertained any doubt, the Reviewer might have complimented him on not 'interfering with the ordinary course of 'criminal justice in particular cases of capital punishment;' but we imagine he enjoys a more exquisite satisfaction in the consciousness of having saved four human beings from a fate as unjust as it was terrible and ignominious—and that because of such very interference.

Besides, when a law is admitted to be unnecessarily sanguinary and severe, every individual instance of its application calls for prompt and immediate sympathy and inter-

ference; lest, while mercy is indulging in abstract speculations of improvement, justice may be defiled, and barbarism promoted, by cruel and inhuman practices.

The punishment of death, when inflicted, is, of course, *irreparable*—no atonement can be made to him who unjustly suffers it, as in the case of *secondary* punishment; and, therefore, every instance of error in adjudging death ought to serve to put legislators on their guard against the danger of being too ready to arm fallible men with the weapons of judicial extermination.—*Morning Herald, Tuesday, April 19, 1831.*

Executions revived in London for Sheep-stealing and Larceny in a dwelling—Cases of Widgett and Broach.

Our readers are aware, from the publication of the Recorder's Report to the King in Council, that two men, named *George Widgett* and *John Broach*, are selected, from among the number of persons capitally convicted at the Old Bailey Sessions in April last, to suffer the extreme sentence of the law.

There were *eighteen* persons who received sentence of death at that sessions; and we presume the *two* cases in which the royal mercy does not interpose between the unhappy criminals and the exterminating severity of the law, are the two worst cases in the calendar; otherwise the selection must have been made either in a spirit of partiality or caprice. Now, what are really those cases in which it is thought nothing will satisfy the ends of justice but the shedding the blood of the offenders? One is a case of sheep-stealing—a crime against property, which undoubtedly deserves to be severely punished, but which is not, under any circumstances, an offence which justifies the sacrifice of human life.

Recollecting, as we do, the opinions which the leading Members of the present Ministry entertained of capital

punishments when out of office, we were not prepared to expect that they would have advised the King to withhold the prerogative of mercy from any of those inferior offences which a vindictive and barbarous system of legislation made capital, and which, although they constitute serious violations of the rights of property, are not accompanied by any of those circumstances of atrocity or terror which distinguish violent and murderous crimes.

There are persons who assume the name, and pretend to the intelligence of legislators, who, whenever it is proposed to abolish any of our sanguinary laws, express their alarm at the dangers of innovation upon the ancient and established system of English criminal jurisprudence. This is an alarm which betrays as much ignorance as it does obduracy of feeling. Most of our sanguinary statutes are themselves innovations on the ancient law of England.

How long is it since the legislature called in the assistance of the executioner to put down the offence of sheep-stealing? It is only since the 14th year of George II. that capital punishment has been inflicted for this crime; and we believe it will be found that, notwithstanding the sanguinary examples that from time to time have been made, the capital law has had no effect in diminishing the amount of depredation in this way. Nor, indeed, is it to be wondered at; for, as in every violation of the law where the penalty greatly exceeds the offence, humane and conscientious people would rather bear with the injury than prosecute, many offenders escape with impunity; while those that occasionally fall a sacrifice to the rigour of the law, excite the compassion of the public, whose natural sense of equity is too strong for the artificial morality of the law, and who sink their detestation of the crime in their sympathy for the offender that unjustly suffers beyond the measure of his guilt. No man dies the death of the murderer for sheep-stealing in France, or even in Russia. Is such property less secure in those countries—or is human blood more sacred?

As to the offence of *John Broach*—that of stealing in the dwelling-house property above the value of *five pounds*—under what law is he sentenced to suffer?—under the statute of the 7th and 8th George IV,—one of Sir Robert PEEL'S Acts for the amendment and amelioration of the Criminal Law. Previously the sum necessary to render the offence capital, or the minimum price of human life, was *forty shillings;* so that Sir Robert PEEL, in his enlightened and comprehensive view of criminal legislation, went to the trouble of repealing the original Act on this subject, of the 12th of Anne, and devising and carrying a new enactment in its place, which raised the value of human life by the amount of *three pounds sterling!*

The late lamented Sir Samuel ROMILLY—the ablest lawyer, and at the same time the most humane legislator of his day—considering that the putting the crime of stealing in the dwelling-house to the amount of forty shillings on a level, in point of punishment, with the most atrocious acts of violence and blood, was not to be defended on any principle of policy, morals, or sound justice, brought in a Bill to repeal the Act altogether, and to make stealing in the dwelling-house the subject of a secondary punishment. He twice carried this Bill in the House of Commons, and it was twice thrown out in the House of Lords, who, unfortunately, have been always much more ready to give their sanction to innovations of severity upon our Criminal Law, than to those of judicious lenity and temperate justice.

When Sir Samuel ROMILLY introduced this Bill and others to ameliorate the Penal Laws, not by a huckstering alteration of a few pounds, but by a real change of principle, he was supported by the present Lord Chancellor and Sir James MACKINTOSH, as well as by other distinguished men in the House of Commons, and by Lords GREY and HOLLAND in the House of Lords, whose names we select, because of the important stations which they hold in the present Ministry. Yet it is under a Ministry, of which Lord GREY

is the Premier, and Lord BROUGHAM the Lord Chancellor, that a sheep-stealer, and a man convicted of stealing some articles of value in a dwelling-house, are ordered to suffer death.

We hope that the public will come forward with petitions to the throne to pray for a commutation of the sentences of these unhappy men; and that the disciples of ROMILLY, now in the days of their power, will not, upon reflection, think it right to have recourse to the old sanguinary system, which, when in Opposition, they so eloquently condemned. —*Morning Herald, Monday, May* 23, 1831.

[At the time this article appeared, the *Courier* Newspaper was one of the ministerial organs, or was supposed to be so. Accordingly some paragraphs were inserted in it, for the purpose of justifying the execution of these men, because they would, it was argued, suffer "*under the existing law.*" This doctrine was subsequently avowed in the Upper House by a Noble and Learned, but not a Tory, Lord.—ED.]

The same continued.—Answer to the Remarks in the Courier.

In adverting again to the cases of the two convicts who are ordered for execution to-morrow morning, we wish it distinctly to be understood that we did not, and do not, object to the infliction of death in these instances, on the ground of a partial or injudicious selection having been made out of a calendar of eighteen condemned persons, who might all have been swept from the face of the earth together, if the Government so pleased, in accordance with the letter and the spirit of the English laws:—our objection is to *any selection* for the scaffold being made, if these were the *worst* cases in the calendar; and we are well convinced that, if the sentences are carried into execution, it will be under circumstances that do not justify the shedding of blood, either on moral grounds or those of public necessity.

An Evening Paper (the *Courier*) says, in allusion to our remarks—

'It would probably have been found that, abstracting the 'question as to the *fitness of the law* under which these men are 'sentenced, the selection was well made; and we hope it will be 'admitted that, whilst capital punishments for other crimes than 'murder shall be considered necessary, the Government will, in the 'selection of offenders to whom it is intended to extend the mercy 'of the Crown, have regard to the *general character* of the con-'victed.'

Here is a doctrine avowed which is not more abhorrent from humanity than from every idea of sound and dispassionate policy. What! if the crime for which a man has been tried and convicted, does not in any view of it deserve death, is he to be hanged, because, on a secret investigation, it does not appear to those who are the dispensers of his fate, his character is that of an upright and virtuous man? If men were to be hanged for bad characters, we might dispense with the hulks, and transportation, and imprisonment, and the treadmill, and secondary punishments altogether.

Again, if it be inhuman and unjust to hang men for certain offences, of which they have been legally convicted according to the rules of evidence in open Court, and in a judicial manner, is it right or just to hang them for allegations of bad character not proved according to the rules of evidence in open Court, not coming under the cognizance of the Jury who returned the verdict, and only enquired into by a mode of proceeding arbitrary, inquisitorial, and extra-judicial?

The Evening Paper to which we have alluded, also says—

'With respect to the law, we fully agree with our contempo-'rary, that there is something inhuman in the destruction of life 'for offences of such a character; and we also feel that the prac-'tice of destroying life for other offences than murder, or robbe-'ries committed under circumstances of brutal atrocity, is attended 'with no good result in the way of example. The proof of this 'is, that the crimes in question have not increased with the com-

'parative rarity of executions. This fact alone ought to make 'capital punishments even less frequent than they have been of 'late years, and to induce the legislature to amend the law.'

There is as much admitted here as we can require in favour of the view which we have taken of the subject. It is the instinctive testimony which the better feelings of the writer bear to the *injustice* as well as the *inexpediency* of the system, the *practical* application of which he had, in the former passage, attempted to defend.

He condemns both the law and the practice, and we do no more. He says it is inhuman to destroy life for offences of such a description as *Widgett* and *Broach* are sentenced to be executed for to-morrow morning; and we say the same. He says that the *practice* of taking life for other offences than murder, or robberies committed under circumstances of brutal atrocity, is attended with no good result in the way of *example;* and we say the same. He says the crimes in question have not increased with the comparative rarity of executions; and we say the same. He says this ought to make capital punishments even *less frequent* than they have been of late years; and here also our opinions coincide.

Now is it clear, from all this, that the two convicts, who have neither committed murder, nor robberies of brutal atrocity, nor any acts of violence whatever, *should perish* on the scaffold for their offences, or that they should *not*?— If our contemporary answers the question in the affirmative, he certainly draws a most extraordinary conclusion from such premises. It is, in fact, one of the most remarkable instances of the *non-sequitur* in argument which have ever fallen under our observation.

If, indeed, sanguinary laws may be carried into execution, simply because they happen to *remain on the Statute-book*, although public opinion and all enlightened legislators have long since pronounced their condemnation, and called for their repeal, then would a Government be justified in drawing

forth an obsolete statute of blood, either through motives of caprice or cruelty, as a snare to human life. Object to it, and the answer is, *it is the existing law;* and therefore the Executive Government may make it an *instrument of inhuman destruction*, if they be so minded. But will an "enlightened" Government reason in this way? Or, if any Government reasons in such a way, will an enlightened public approve of their argument, or respect their decision?

As to sheep-stealing, it no more deserves death, in either a moral or social point of view, than stealing an ass or a pig, neither of which is a capital offence by our law; and yet asses and pigs are as well protected from depredation as, in the circumstances of things, it is possible for such animals to be. But the man who is to suffer, has stolen *a few* sheep. True; but if he had stolen twice as many asses, or three times as many pigs, his punishment, though severe, would not cut him off in his sins, nor deprive him of the chance of becoming afterwards a useful and industrious member of society.

Our Contemporary speaks of the other man as a *burglar*. We understood he had been convicted under the Act which makes it death to steal to the amount of five pounds in a dwelling-house. This is a very different offence from burglary; but if we were misinformed, and the man has been found guilty as a burglar, his offence must have been one of those *constructive* burglaries in which no actual violence is committed; and to say that 'he only wanted the physical energies of the common burglar to become a murderer,' is one of the strangest modes possible of constructing an imaginary foundation on which to build a sanguinary inference. Is the doctrine of constructive burglary, or constructive murder, a whit better than that of constructive treason, so justly exploded from our law?

Our Contemporary says, as a reason why *sheep-stealing* is not punished with death in France, that there is in that country a 'horror of crimes against unprotected property.'

—What has created it? Is it severe laws or mild ones? And what has demoralized the people of this country so as to make property so very insecure? Our Contemporary will know how to answer both questions when we tell him that the English criminal laws punished upwards of 200 offences with *death*, while under the Code Napoleon there were but *six* capital crimes. What argument then, of morals or policy, is there for the sanguinary spectacle of to-morrow morning?*—*Morning Herald, Tuesday, May* 24, 1831.

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* *The Criminals at Newgate condemned to suffer next Wednesday.*

We have inserted an able communication, signed *Justitia*,† on the approaching execution of two convicts, one for sheep-stealing —the other for burglary.‡ In another part of the *Courier* we have made some observations on the subject treated in our correspondent's letter; but we will remark here also, that we should entirely agree with him as to the propriety of amending our penal code, even if there were no other reason for doing so, than the encouragement given to offenders in the chances of escape, arising from the known disinclination—first, of Juries to convict on charges affecting life; and, secondly, of the Executive to carry the sentence of the law into effect.

Our chief reasons, however, for desiring an alteration in the penal code, are, the doubt which we entertain of the righteousness of the power assumed by society to take away life for offences, to guard against a repetition of which so severe a result is not necessary; and the well-established fact, that the punishment of death in our country *is never found to answer the chief end of legislation—repression of crime:* whereas in other countries, where there is no punishment of that nature for other crimes than murder, those crimes are of comparatively rare occurrence.—*Courier, Monday Evening, May* 23, 1831.

† TO THE EDITOR OF THE COURIER.

SIR,

Permit me the liberty of a few general remarks, in reference to our penal laws, while the case of these unhappy men is before the public.

They are sentenced to die for crimes of theft—aggravated certainly; but still they are crimes alone of theft, and not characterized by any murderous features, executed or designed.

‡ Not burglary, but larceny in a dwelling. (See p. 121.)

The same continued—Further reply to the Courier.

We feel it necessary to advert once more, and for the

Your readers may not be aware that such severity is peculiar to England—to Protestant England!—to modern times, not the days of our forefathers.

In Catholic countries offences of this nature are not punished with death. The Ruler of Austria, for instance, aided by the counsel of even a Metternich, spares the lives (traitors excepted) of all but murderers; and these are not executed until they have confessed their guilt. Some time since, indeed, there was a resolution taken at Vienna to hang incendiaries; but it was scarcely acted on before it was abandoned, and for very good reasons. These facts I have from a most respectable inhabitant of Prague. Himself a Catholic, he expressed to me his astonishment at the sanguinary laws of the English 'Protestant' Government, as he termed it.

But be it remembered that in America Protestantism has long since been absolved from this national sin.

But what shall we say, if even the Muscovite Government—that barbarous and despotic Power—that prototype to English minds of nearly all that is bad—if that Power is an age before us in the science of legislation? We should do well to improve our boasted laws, by taking a lesson from the 94th and 95th Articles of the Russian Code, formed under the reign of the Empress Catherine. They run thus:—

'Article 94. It were unjust to inflict the same punishment 'upon the highway-robber, as upon him who both robs and assas-'sinates. *For the public security*, therefore, it is evidently neces-'sary to make some difference in the punishment prescribed for 'those several crimes.'

Again—'Article 95. There is a country, where thieves do not 'commit murder:—the reason is, because, while thieves are there 'left to hope for transportation to the Colonies, murderers were 'excluded from that hope.'*

Not long since, being within the Prussian dominions, I learned that the laws there are mercy itself compared with the sanguinary code of Britain.

* "*The Frequency of Capital Punishments inconsistent with Justice, sound Policy, and Religion: Being the Substance of a Sermon.* By WILLIAM DODD, LL.D., *Chaplain to* THE KING."

last time, to the cases of the men who are ordered to suffer

Passing afterwards through the great commercial town of Hamburg, I enquired whether they hanged men for the crime of forgery; and was informed by a gentleman of high literary character, Editor of one of the Public Journals in that City, that it was eleven years since any person was executed at Hamburg, and then the offence was that of murder.

In Holland similar enquiries were made; but still the laws of my own country, England, were considered by reflecting men as pre-eminent for severity and injustice. An occurrence happened, which I will just mention, at Antwerp, where I had no acquaintance. A trunk of mine was left behind upon the public quay, at midnight. The loss was not perceived till we had proceeded eighty miles farther. An inhabitant here undertook to make some enquiries, which I expected to issue to no purpose: it was, however, found, although bearing no other mark than a ticket, and this, to our surprise, without incurring the smallest expense. But particular instances are unnecessary: it is an admitted fact that property is less liable to plunder in many parts of the Continent than in England. Why is this? A different system of Police is not the sole cause. What share, I would ask, is attributable to the *uncertainty of punishment* produced by our lottery-like laws, which, while they assign to murder and theft the same penalty, do, by the non-enforcement for the most part of the sentence, permit the offenders to hope they may draw the prize of impunity?

But I contend that death is frequently *dreaded less* than other punishments which are more lasting. Only look at the language in Court of a culprit hanged on Monday last at Glasgow, for burglary. On receiving sentence, he said,—'I have your good-will, my 'Lord; death is sweeter than confinement:—cowards die many 'times—I will die but once.'* Such an occurrence should be borne in mind by legislators.

And again, among the 'cloud of witnesses' on this subject, look at the admirable reasoning of Sir William MEREDITH in Parliament, which, in the short compass of six octavo pages, shews the various bearings of the argument. It is impossible to withstand his powerful eloquence. True, he lived near fifty years ago, when the science of cruelty was in greater perfection; but he still lives, and still speaks, as does his great contemporary

* Glasgow Chronicle.

death this morning ;*—not that any thing we can now say

HOWARD, and his noble and consistent successor, ROMILLY—undying names, though not dignified by office.

I am glad that MEREDITH'S speech is reprinted separately, and appears to be gaining extensive circulation. Permit me to enclose a copy, and to subscribe myself,

The Public's humble and faithful Servant,

JUSTITIA.

* These two men suffered death on the day appointed at the PRIVY COUNCIL, *upon the eve of a change in the law by which their respective crimes ceased to be capital*—a melancholy reflection! The Bill, by which this change took place, had been some months upon the list of Notices of the House of Commons, but was postponed by the pressure of other business. It passed the very next session of parliament, being the 2 and 3 of Will. IV. cap. 62, one of Mr. EWART'S Acts for the mitigation of the Penal Laws.—At whose hand will "the blood of these men be required?"

The reader will be gratified to observe the good effects produced in London and Middlesex by removing the punishment of *death*, and substituting one *more certain* of infliction. Parliamentary Returns furnish the subjoined results :—

LONDON & MIDDLESEX—SHEEP-STEALING.	*Executed.*	*Committed.*
First period, three years, 1827-28-29.....	2	22
Second period, three years, 1832-33-34, no longer punishable with death	*none*	18
STEALING IN A DWELLING, &c.		
First period, three years, 1827-28-29.....	5	213
Second period, three years, 1832-33-34, no longer punishable with death	*none*	180

In each case, then, it appears that a diminution of crime has resulted from abolishing the scaffold, and providing another penalty —more certain of infliction, because prosecutors, witnesses, and jurors *assist* in the enforcement of the law, instead of conspiring to defeat it. (See BLACKSTONE, Vol. iv. Ch. i.)—Christian legislation and sound policy are inseparable.

can possibly avail them, but with a view to exposing the fallacious arguments which have been used in defence of those disgusting spectacles, by which, for offences like those in question, England alone, of all the nations of the civilised word, is disgracefully distinguished.

When we first stated that the offences for which these men were doomed to suffer, did not in any point of view—whether a moral or a social one—whether one of justice or expediency—deserve death, we were told by the *Courier*, that enquiry had been made into their characters, which being found to be bad, they were selected for the vengeance of the law; for even the advocate of this melancholy selection condemns the law as inhuman, and thereby admits that its punishment rather partakes of the nature of *vengeance* than *justice*. We answered that, to hang convicts for bad character, would be to hang them, not upon evidence given on oath openly in a Court of Justice, and determined on by a Jury, but upon statements made under no responsibility, and by a mode of proceeding which was arbitrary and extra-judicial.

Now we are told that the rigid enforcement of the law is not in consequence of the badness of character of the convicts, but that their having bad characters prevented the extension of mercy. Is not this merely putting in other words, that the men were selected to be hanged, not on account of the offences of which they were *found guilty* in open Court, but on account of another charge, that of being of ill reputation, of which they were *not* found guilty in any judicial Court whatever? The argument stands thus:—The men's lives would have been spared, notwithstanding the verdicts against them, if their general character had been good; but the badness of their character prevented it: therefore they were ordered to be hanged, *because* they had bad characters. Nothing can be clearer than this. It was not the sentence of the law which, upon this admission, fixed their doom, but another sentence of which the *law*, had as

it is, *knows nothing;* for the law condemns no man to death for having a bad character.

We are glad to have such a high authority to refer to, in support of our position, as the late Sir Samuel ROMILLY—a man who was, in his legislative career, deservedly, the oracle of the members of the present Government, on all questions touching the reform of our criminal jurisprudence—a subject to which he devoted for a long time the best energies of his great mind, and the honest zeal of a heart which NO POLITICAL TEMPTATIONS EVER CAUSED TO SWERVE from vindicating, against the doctrines of a tyrannical expediency, the eternal principles of justice. In his speech, on moving for the total repeal of the Shoplifting Act, and two other Acts, which made it death to steal to the amount of forty shillings in a dwelling-house, or on board a vessel in a navigable river, he says, in reference to the sort of arbitrary discretion which has been exercised in the cases of *Widgett* and *Broach*, by selecting them for execution on account of something extrinsic to the crimes of which they were convicted—

'A man is convicted of one of those larcenies made capital by 'the law (such as *sheep-stealing*, or privately stealing in a *dwelling-*'*house*), and is besides a person of *very bad character*. It is not to 'such a man that mercy (according to the present system) is to be 'extended—and the sentence of the law denouncing death, the 'remission of it must be called by the name of *mercy*—the man, 'therefore, is hanged; but in truth *it is not* for his *crime* that he 'suffers death, but for the *badness of his reputation*. Another 'man is *suspected* of murder, of which there is no legal evidence to 'convict him: there is proof, however, of his having committed a 'larceny to the amount of forty shillings *in a dwelling-house*, and 'of that he is *convicted*. He, too, is not thought a fit object for 'clemency, and he is hanged, not for the *crime* of which he *has* 'been *convicted*, but for that of which he is only *suspected*. A 'third, upon his trial for a capital larceny, attempts to establish 'his innocence by witnesses whom the Jury disbelieve; and he is 'left for execution, because he has greatly enhanced his guilt by 'the subornation of perjured witnesses. In truth, he suffers death,

' not for *felony*, but for *subornation of perjury*, although death be ' not the legal punishment of this offence.'

If the advocates of the practice of executing inhuman laws, on the ground of circumstances extrinsic to the legal crimes of the convicted persons, will not, upon this testimony, believe our view of the subject right, neither would they believe us, although " one had risen from the dead."

In fact, where the crime, as proved in all its circumstances before the Jury, is not such as to deserve death, no other consideration can justify the infliction of it. The danger which the apologists of capital punishments apprehend from the badness of the convict's character, can be sufficiently guarded against by the punishment of transportation for life; but perhaps that mode of protecting society from the possible return of the convict to the error of his ways, is objectionable, because it sheds no blood!

There are some who argue this matter as if it were absolutely necessary that where, among eighteen convicts, no crime was of a sufficiently flagrant nature to deserve death, Government were still bound to select some for execution, lest it should be, for once, said that the Court of the Old Bailey had a bloodless session.

When we said that the stealing of pigs and asses, though as serious moral crimes as stealing horses or sheep, was not punished with death—and yet that sort of property was sufficiently protected—we meant, protected *by the law*;—for the poor man's ass that browses on the bare-worn common, is still less protected, in point of fact, than the sheep of the rich man, who can afford to keep a shepherd to take care of them; but the ass or the pig is frequently the whole of the poor man's live stock, and one sheep, or ten sheep, is a very small part of the rich man's stock; but to steal the *whole* of the poor man's stock deserves a *moderate* punishment, and to steal a *small part* of his wealthier neighbour's, calls for extermination!—*Morning Herald, Wednesday, May 25*, 1831.

Public Meeting at Exeter Hall—Resolution against the Punishment of Death.

The report of the meeting of the 'Prison Discipline Society,' which will be found in our columns to-day, may, perhaps, furnish the advocates of sanguinary laws with some opportunity of exercising their peculiar ingenuity in proving that justice is not degraded, nor humanity shocked, nor reason outraged, by the Draconic severity of our Criminal Code.

It is a melancholy fact that England, whilst excelling most countries in other intellectual and moral advantages, and possessing institutions of learning and charity which equal, if they do not surpass, whatever public establishments of a similar nature have adorned the civilized world, is inferior to most nations that have emerged from barbarism, in the character and spirit of her Criminal Laws. It seems as if our legislators thought, that to have the *power* of taking away human life, was equivalent to having the *right** to do so; and they have, in the exercise of this mistaken and abused power, accumulated statutes of blood, until the common sense, and common feelings, of the people are

* Among the numerous petitions presented in the foregoing session of parliament, there is one on record from which we have taken the subjoined extract. It came from HACKNEY, and was most respectably signed. We know not with whom it originated; but the intelligent reader whose views embrace higher considerations than those of mere *expediency*, will be glad to see this proof of advancing civilization:—

'Above all, your Petitioners are deeply impressed with the 'sentiment that the CREATOR and LORD OF LIFE has not invested 'Monarchs, or any description of Rulers, or any Nations, or other 'Communities of mankind, however legitimate, venerable, or power-'ful they may be, with THE RIGHT to exercise an unlimited discre-'tion of enacting the punishment of DEATH for whatever offences 'they may think fit: but that the competency of human legisla-'tures, for such legislative decisions, is limited by the revealed Will 'of GOD.'—*(Printed Appendix to the Votes and Proceedings of the House of Commons for the year* 1830.*)*

shocked by the system of vengeance which usurps the name of justice.

Cruel laws always defeat their own intention, as violent proceedings in general do, by the re-action which they produce. The object of enlightened justice is, that every violator of public and private rights should be punished; but, in order to that, it is necessary that his punishment bear a just proportion to his guilt. If the punishment be excessive, the public abhorrence falls, not on the offender, but on the law; and, as it is *necessary to have the co-operation of public opinion* in carrying the laws into effect, whatever laws excite the public repugnance, become incapable of being exercised in that certain and uniform manner, without which they must fall into contempt.

When laws are so irrationally severe that they cannot be generally executed, any particular instances in which they are put in force—as in the case of the two wretched men the other day, for offences not usually punished with death—excite disgust, and appear more like a harsh and cruel sacrifice to some capricious feeling, or temporary notion of expediency, than the debt of crime paid to dispassionate justice.

Such examples prove that, whoever may have the execution of the Criminal Laws of a country, the *laws* should be *good*, that Government may not have the power of *throwing the responsibility* of inhuman punishments on the *vicious severity* of the law. The members of the present Government, when in Opposition, had so repeatedly, and so powerfully, expressed their abhorrence of laws that visited mere violations of property as if they were offences of violence and blood, that the public were astonished to find a *preparation for legal reform* prefaced by such *sanguinary arguments*; but we hope the people will now see the necessity of constitutionally and vigorously insisting on the abolition of laws, which have themselves *abolished the first principles of justice and humanity.*—*Morning Herald, Tuesday, May* 31, 1831.

Special Commissions in Ireland.—Ferocity of the people increases with the vindictive spirit of the Laws.

If Special Commissions and capital punishments were the best means to subdue the passions, and correct the habits of a people, there is no reason why Ireland should not now be the most peaceable and the most civilized country in the world. No people on the face of the earth have had more of the discipline of rigorous laws, and few have had so much—and no people are more ready to act upon warm and impetuous feelings, under a real or imaginary sense of wrong, without any regard to the consequences of an intemperate or illegal vindication of what they consider their violated rights.

Last year Cork had its Special Commission—this year Limerick and Clare are undergoing that "fiery ordeal" of justice; and we suppose the avenging sword of the law will presently be bared in a similar way in Galway, the Queen's County, and some other parts.

The majority of the offenders to be tried, are charged with outrages and crimes punishable under the "Whiteboy Acts," which outrages have their origin in disputes about the rent of land, and the payment of tithe—matters that have been, for a great space of time, the exciting causes of the most bitter contention, and deadly animosity, between the rich and the poor; the former being backed by the laws of the land, which are truly vindictive; and the latter, by the no less vindictive laws of the nocturnal conventions of agrarian legislators.

In charging the Grand Jury at Limerick, the other day, Mr. Justice Jebb is reported to have said,—

'The offences, which have led to this investigation, are of 'such a nature as to justify me in describing them as a species of 'warfare between the *peasantry* and the *proprietors and occupiers of* 'land. The object of this warfare is to deprive the proprietors or 'occupiers of the power of disposing of their property as they shall 'think fit, and to dictate to them the terms on which their estates

'shall be dealt out to the peasantry of this country. The means 'by which this object is sought to be obtained, consists of every 'species of crime, accompanied by violence, by injuring of pro-'perty of every kind, and by ascending, in regular grades, from 'ordinary trespass, to murder in its worst and most hideous forms '—cold-blooded, premeditated assassinations, so cunningly con-'trived, so secretly plotted, and so timely executed, as to baffle, 'and escape, in many instances, the pursuit and diligence of the 'most active and persevering individuals, to whom are intrusted 'this branch of the administration of the laws of the land.'

We believe this description is not exaggerated; it is no more than the melancholy—the afflicting truth. What is worse, the moral disease, which has stricken the peasantry of Ireland, increases from year to year in violence and malignity. The Judge looks only to the *crimes* in the calendar, for the purpose of their *punishment*: the Government should enquire into their *causes*, with a view to their *prevention*.

Whatever the causes may be, we can assert, with confidence, that it is not mild and temperate punishment which has led to the contempt of the laws which Judge JEBB so forcibly describes:—never were laws framed in a more exterminating spirit than the Whiteboy Acts; they have, since the first year of their enactment, which was 1787, been applied, from time to time, with an unsparing rigour, congenial with the temper of the fierce legislation that called them into existence. What is the consequence? They have *not* tamed the wild passions, nor subdued the exasperated feelings of the peasantry; on the contrary, they have rendered wild passions more savage, and exasperated feelings more vindictive. Instead of introducing discipline, they have increased disorder. Where they found the peasantry discontented, they have made them desperate; they have aggravated the evils which they pretended to cure, until we have seen the peasantry become, as they are at the present day, habituated to outrage, as a constant practice, and dreadfully familiar with the shedding of blood.

This statement of the increased and increasing demora-

lization of the Irish peasantry, while such exterminating laws hang over their heads, is confirmed by Judge JEBB, who says—'The character of the people, once remarkable for their warmth of feeling, and for strong and sincere attachments, has become changed; their morals are now perverted, and all the principles of religion disregarded.' It is quite clear, therefore, that from the year 1787, down to the present day, Special Commissions, with the terrible spectacles offered to the public eye by the rigid execution of vindictive laws, have done more harm than good. When a people become more savage and immoral, the laws, which ought to be a great source of civilization and morality, must be essentially wrong.

Under the Whiteboy Acts, a *threat* of violence to induce a man to enter an unlawful combination, or to induce him to do injury to the lands of another, is punishable with *death*. Leaving the morality of such an enactment out of the question, we are of opinion that its impolicy requires its abolition. Where no distinction is made in the punishment which the law assigns to threats of violence and actual murder, the *perpetration* of the latter crime will become of more common occurrence than it otherwise would be. When a man knows that he may be hanged for a *threat*, or other indication of violence, and can only be hanged for putting that threat *in execution, to the destruction of life*, he will the less hesitate to gratify his revenge by destroying an enemy, or to consult for his safety by putting a *witness out of the way*. Under such laws we are not surprised that revenge should so frequently terminate in homicide.

In the County of Clare, the number of persons charged with murder, to be tried at the present Commission, is forty-one—rather a strong illustration, we think, of the inhumanizing influence of violent laws.

We observe that two persons—namely, *Michael Devitt* and *Michael Stovin*—have been capitally convicted at Limerick, for feloniously threatening one *Martin Kelly* with the words,

"I'll break your head, and split your skull," to induce him to join an illegal association. We trust we have shewn cause why the laws should *not be carried into execution* in those cases. The law which confounds violent words with sanguinary deeds, is in barbarous opposition to the first principles of justice.*—*Morning Herald, Tuesday, June 7*, 1831.

Case of James Carroll convicted at Ennis, in Ireland, of Robbery of Arms—Doubts suggested as to the prisoner's guilt.

We think it right to call the especial attention of Government to the case of *James Carroll*, who has been capitally convicted, and ordered for execution at Ennis, County of Clare, for having, with other persons, on the 8th of April, feloniously taken some fire-arms from the house of a Mr. Blood, of Castlefergus.

It appeared, on the trial, that the men who took the fire-arms, came to the house when Mr. Blood was from home. There were two policemen on the premises, one of whom they laid hold of, and placed on his knees, while they took possession of certain guns, pistols, &c., which lay in the parlour; they threatened a maid-servant and the other policeman, but inflicted no actual violence on any person; nor did they meddle with any other property than the fire-arms, which partly belonged to Mr. Blood, and partly to the police. It is, therefore, not a case in which the sentence of the law ought to be carried into execution, even if the guilt had been brought home, beyond the shadow of a doubt, to the prisoner at the bar; still less should the capital law be enforced, when it is shewn to be a case of considerable doubt upon the evidence, as we think an attentive perusal of the report of the trial will convince every unprejudiced person.

The offence charged in the indictment having been proved to be committed by some persons, the question which

* These two men were afterwards *reprieved*.

the Jury had to determine, was the *identity* of the prisoner. The two policemen swore to his person. One of them only saw, from a window, the men who took the arms, but immediately drew back his head, because, he said, a gun was pointed at him. It is not likely that, with a hasty glance, and under circumstances of so much alarm, he could have made very accurate observation. The other policeman had been placed, as we stated, on his knees, while some of the party took the arms; but the report does not inform us whether his face was towards them, or away from them—most likely the latter. He swore, at all events, positively to the prisoner's person; but it came out, on cross-examination by Mr. O'CONNELL, that this very policeman had been, for some reason or other, dismissed from the police, and restored again, and that the other had been suspended for a month.

Now, in contradiction to the two policemen, whose interest was, beyond all doubt, on the side of their evidence against the prisoner, and who, without any intentional false swearing, would have a natural bias to convict; a perfectly disinterested witness—namely, the butler of Mr. Blood, at present residing with him—positively swore that the prisoner was not one of the party who took the arms. Another witness also swore that the prisoner was at work with him at a place seven miles from Mr. Blood's house on the day in question.

The Jury, however, returned a verdict of Guilty; on which the report contains the following observation:—'This verdict was most unexpected, as every one about the 'Court thought that the butler, who lived in the house, 'and swore so positively, would have saved the prisoner.' Evidence of personal identity is often fallacious, particularly from a hasty view, under circumstances of alarm:—fatal mistakes have thereby occurred under our sanguinary laws. It is the maxim of the law to give the prisoner the benefit of a reasonable doubt;—and was not this a case of reasonable

doubt? We do entreat the Government not to take the life of a fellow-creature upon such evidence, lest they may commit an irreparable error.*—*Morning Herald, Friday, June* 10, 1831.

Reform of the Criminal Law—Mr. EWART'S *Bill to repeal the Punishment of Death for stealing in the Dwelling-house, and some other cases of Larceny.*

It will be recollected that Mr. EWART, the Member for Liverpool, gave notice that he would, we believe on Tuesday, move for leave to bring in a Bill to repeal the punishment of death for the offences of horse-stealing, sheep-stealing, and stealing in the dwelling-house, no person being put in fear.

We are glad to see an independent Member of Parliament coming forward as a practical advocate of reform in our criminal laws; and thus taking the earliest opportunity that his situation as a legislator afforded him, to endeavour to erase from the Statute-book some, at least, of those sanguinary laws which are a disgrace to a Christian land, and a reproach to a civilized people—laws which, founded on the principle, not of justice, but of vengeance, express not the moral wisdom, but the vindictive intemperance of the legislature—making crimes of various degrees of malignity and moral guilt expiable only by human blood.

Had the life of Sir Samuel ROMILLY been spared to his country, it is probable that this code of vengeance would, before now, have been purified of much of its barbarism. For *his* were statesmanlike views† of reform in criminal law—founded in principle, guided by a comprehensive intelligence, and pursued with a spirit of *integrity* and perseverance totally disconnected from any consideration of politics or party. His masculine intellect and vigorous benevolence

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* *Carroll*, we believe, was subsequently reprieved.—ED.

† For some information regarding the expected publication of the manuscripts of Sir Samuel ROMILLY, see the note at page 3.

disdained the petty views and mutilated improvements of a temporizing expediency. His ambition was not to smooth down the rugged exterior of barbarism by some superficial amendments, but to extirpate it by essential reform.

When he brought in a Bill to repeal the law which punished theft to the amount of *forty shillings* in the dwelling-house with *death*, he did not propose to raise the value of human life by *three pounds sterling!* * * * * He proposed that for this offence the punishment of death should be abolished, without any reference to the amount of the sum stolen. He carried his Bill through the House of Commons; but was defeated in the House of Lords, notwithstanding the able exertions in support of his measures of Lords GRENVILLE, GREY, and HOLLAND, of whom the two latter have lived to become leading members of an Administration who advised the Crown to execute a miserable culprit the other day, whose offence was against this Statute, for *stealing privately in the dwelling-house*—a statute which, as far as depended on the *House of Commons*, had been *repealed* in the year 1811, and which, under a Whig Ministry—a Ministry composed of the once-zealous supporters of Sir Samuel ROMILLY's principles, was, in defiance of public opinion, carried into effect in the year 1831 !*

The Bill of Sir Samuel ROMILLY proposed that the stealing to a certain amount in a dwelling-house should be punishable as *simple larceny* only; and that the stealing any money, goods, chattels, wares, or merchandise beyond that amount, should be punished more severely than simple larceny—*viz.*, that the offender, and his aiders and abettors, should—

'Be liable to be transported beyond the seas for life, or for 'such term, not less than seven years, as the Judge before whom 'such persons shall be convicted, shall adjudge; or, in case the said 'Judge shall think fit, to be imprisoned only, or to be imprisoned 'and kept to hard labour, in the common Gaol, House of Correc-'tion, or Penitentiary, for any term not exceeding seven years.'

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* See page 125.

We regret to say that Sir James MACKINTOSH, who took up the subject of the Criminal Laws after the death of Sir Samuel ROMILLY, has slept over them for years. We are therefore pleased that Mr. EWART has come forward; and we hope that other members will take up other branches of the Criminal Law, and co-operate in this great work; that, whatever may become of political parties, and political arrangements, the more important interests of civilisation and humanity may not be neglected.

We will just mention, for the information of Mr. EWART, if not already acquainted with the subject, what are the provisions of Mr. LIVINGSTON'S enlightened code for Louisiana, relative to the offences of *stealing in the dwelling-house* and *house-breaking*. They are these:—

'If any one shall in the daytime, with a fraudulent design, 'enter a house, without breaking or violence, and shall then and 'there commit a theft, he shall be imprisoned not less than *three*, 'nor more than *six years*, at hard labour. If any theft shall be 'committed by breaking any closet, box, or other place of the like 'nature, in which property stolen was contained, the punishment 'shall be not less than *four*, nor more than *seven years* at hard 'labour. Whoever enters a house secretly, or by force, or threats, 'or fraud, during the night, or in like manner enters a house by 'day, and conceals himself therein until the night, with the intent 'in either case of committing a crime, is guilty of the crime of 'house-breaking, and shall be imprisoned at hard labour, not less 'than *ten*, nor more than *fifteen years*.'

Here is something like an apportionment of the penalty to the offence—*a gradation of punishment according to the gradation of guilt*,—a principle of wise legislation, in which our English law is wholly defective. Justice reasons, but vengeance does not.—*Morn. Herald, Monday, July* 11, 1831.

The Riot at Merthyr Tidvil—Case of two men, Lewis Lewis and Richard Lewis, capitally convicted, and left for Execution.

It appears that two of the convicted rioters of Merthyr Tidvil, Lewis Lewis and Richard Lewis, have been left for

execution, and, it is supposed, will be led to the scaffold in a few days. Believing, as we do, that blood enough has been shed in this affair (by military slaughter), we are of opinion that further sacrifice of life can serve no purpose but to revive feelings of irritation connected with that unhappy affair, which had in some measure subsided, and to inflame passions which have been apparently tranquillized.

It is not at the time when the whole country is impressed with a just sense of the cruel character of our criminal laws, and expect their speedy and effective reformation—it is not at such a time that the exterminating Genius of those laws should be unnecessarily indulged with oblations of blood. Such exhibitions, opposed as they are to the public sentiment, can excite no feeling but disgust, and must operate in a way the very reverse of a salutary example.

It is sometimes said, indeed, that vindictive and cruel as our criminal laws are, yet, as long as they remain on the Statute-book, Government is bound to execute them, and that the justification of judicial homicide, under circumstances of barbarous severity is, that 'it is the law.'*

This, in our opinion, is no justification whatever; and our reasons for saying so are, because, in the first place, there are numerous precedents of cruel laws in this country being allowed to become *obsolete* long before they were repealed. We might instance the capital statutes for many sorts of trespasses, such as breaking down fish-ponds, injuring turnpike-gates; also the statutes against witches, and the law which inflicted death upon any person who kept company for one month with gipsies. These and many other of our absurdly inhuman laws were allowed to perish in practice years before they were obliterated from the Statute-book; nor did any Government think it their duty, because such barbarous enactments were law, to shock the public feeling by their occasional revival.

Because, secondly, although the *precedents* for the *prac-*

* See remark by Ed. p. 118.

tical amelioration of the law, before it has undergone *legislative* alteration, are strong, the *principle*, upon which such practical amelioration of the laws takes place, is still stronger.

Let it be recollected that, if sanguinary enactments are the *law of the land*, the *Royal prerogative of mercy* is also *the law* of the land. It is as much the law as any capital enactment in our whole criminal code—nay, it is more: the whole or any part of our criminal laws may be altered, and cease to be the law of the land; but the *prerogative of mercy* cannot be limited or taken away from the Crown. It is not dependent for its existence on the fluctuating Statute-book —it is an element of the Constitution itself, and partakes of its perpetuity. Surely this prerogative of mercy—the most beautiful attribute of sovereignty, cannot be better exercised than in mitigating in practice those laws which are now so generally admitted to be barbarous in spirit, and irrational in principle.

With regard to the unfortunate men who are under sentence of death for the riots at Merthyr Tidvil, it should be borne in mind that they had grievances to complain of, which, though they could not justify violence, yet ought to operate upon their punishment, in favour of a merciful consideration of their case. Their first rising was to put down the Court of Requests, of which they bitterly complained. Have Government ascertained, before they proceed to take away life, whether their complaints in this respect were well or ill founded? Have they taken into account that, before the soldiers came, the rioters, who had it in their power to destroy those whom they considered their oppressors, *neither shed, nor meditated the shedding of blood?* It is true, that when the soldiers were brought on the scene, an attempt was made to disarm them—a grave and serious offence; but most seriously and amply punished by the immediate killing and wounding of nearly one hundred of the offenders. Have not the bayonet and the bullet

done enough, to prove that such an act of popular hardihood is not to be attempted with impunity, without calling in the aid of the gallows?

It should not be forgotten that, amid so much carnage, on the part of the authorities and the soldiers *not one* individual lost his life; nay, at the risk of his own safety, one of the men *now sentenced to die* within a few days, saved a peace-officer from violence.

We do not argue that they should *not be punished*, but we do say that they should not be punished with *death*, whether the question be viewed as one of justice or policy. We quite agree with the opinion of a respectable correspondent, who, in writing upon this subject from Cardiff, says,—'I firmly believe the sparing of the lives of those men would have more effect in tranquillizing the workmen thoroughly, than a hundred executions.'—*Morning Herald, Wednesday, July 27*, 1831.

The case of the Merthyr Tidvil Rioters continued.

We are informed that the announcement of the intention to carry into execution the extreme sentence of the law upon the convicted rioters, *Lewis Lewis* and *Richard Lewis*, has produced at Merthyr Tidvil, and its neighbourhood, feelings of the most painful astonishment. To shew how deeply the public feeling sympathizes with the unfortunate men, and what a strong anxiety exists to avert their impending fate, it is only necessary to mention the fact, that, in the course of about five days after their doom was pronounced from the Bench, a petition for a commutation of their sentence was signed by upwards of *eleven thousand* persons resident in Merthyr and the vicinity; and a similar petition, in the town of Cardiff, received the names of *almost all the householders of the place*, including those of the two town magistrates, the third being absent.

It is to be presumed that the reason of selecting *Lewis Lewis*, as one of the persons to suffer *death*, is, because he had the reputation of a ringleader in the riots. There were, undoubtedly, five bills of indictment preferred against him; but he was tried upon *three* only, and on *two* of these he was *acquitted*. On the third he was *convicted*, under circumstances which induced the Jury to *recommend him to mercy*—a recommendation which met with no attention from the Court.

The principal facts connected with that indictment appear to be as follow:—The Court of Requests, respecting which the riots first broke forth—whether in consequence of real or supposed grievances in its practice, we do not pretend to say—had dispossessed a poor woman of a chest of drawers, no doubt under a legal distress, which was sold for two guineas by the officer of the Court. *Lewis Lewis*, who is a man of rather weak understanding, but of strong feelings, proposed to the mob to recover the two guineas *for the poor woman*; they acted upon his suggestion, and obtained the money by means of intimidation.

This was certainly an offence of a grave and serious nature. It is robbery, in the eye of the law, to obtain money through intimidation, although no actual force or personal violence be used. It is, consequently, a case for serious punishment; but we contend that it is not a case which, on grounds either of justice or expediency, calls for the shedding of the blood of man. Such was the opinion of the Jury when they recommended the offender to mercy—such was the opinion of the 11,000 persons who, in Merthyr Tidvil, signed the petition supplicating for the interposition, between the offender and death, of the saving prerogative of the Crown!

But, whatever may be thought of the criminality of *Lewis Lewis*'s offence, in an abstract point of view, it has its extenuating circumstances. He was the man who, during the riot, rescued a peace-officer, named John Thomas, from

injury, although in so doing, he himself received several severe bruises. This fact goes some way to negative the presumption that he was really the ringleader of the mob. He also gave assistance in protecting a surgeon, named Ekins, from personal harm.

As to *Richard Lewis*, he is convicted of stabbing, with intent to maim; but, besides that *some doubt exists* as to whether he has been satisfactorily *identified* as the real offender, it should be taken into account that the wound was given in a struggle, without circumstances of premeditation, and might have been accidental. A wound on the fleshy part of the thigh can hardly be supposed to have been intended.

In referring to this painful subject, it may not be irrelevant to allude to the fact, that the mob, though very riotous, shewed no bloodthirsty disposition. It is admitted that the mob had at one time possession of a great number of fire-arms, yet *they* did not shoot any person. They had also possession of a certain pass, and the heights above it, from which they might have put to death the very soldiers who had fired on them with such deadly effect. The magistrates having retired to a distance, and taken refuge in Pendarren House, escorted by the military, for self-protection, Merthyr was of necessity left *unprotected* during *three nights* and *two days* succeeding that massacre; yet the mob made no assault, not even on the Castle Inn, notwithstanding the excited people had fresh in their view a scene of carnage, in which nearly a hundred of their number had fallen, killed or wounded, by the fire of the soldiery. More than this—from the heights, of which the mob were in possession, immediately after that carnage, with arms in their hands, they used the language of remonstrance, crying out,—"Don't injure your own countrymen;" "we only want bread;" and using similar expressions.

We are far from regarding lightly the offence of the Merthyr rioters. Whether they had just cause of complaint

against the practice of the Court of Requests, or not—whether they were correct in supposing that at a crisis, when the iron trade was more brisk than it had been for a considerable time, a design was entertained to lower their wages, or not—they should not have resorted to violence. But their violence has already been dreadfully punished:—where a *hecatomb* of victims have been offered up to the offended laws by military execution, surely Courts of Justice can *afford to be merciful.* The riots are now suppressed; the people have returned to their employments; and it is our firm conviction that the peace which has been restored, can be better preserved by *mercy* than by *sacrifice.*—*Morning Herald, Thursday, July* 28, 1831.

Respite of Lewis Lewis, one of the Merthyr Tidvil Rioters—Appeal to the Mercy of the Crown on behalf of the other.

It has been stated, in a Welch Paper called the *Cambrian*, and copied into some of the London Papers, that a respite until the 6th of August had been received for *Lewis Lewis*, one of the Merthyr Tidvil rioters, under sentence of death; and that positive directions had been given by Mr. Justice BOSANQUET, by whom the prisoners had been tried, that the law should take its course on *Richard Lewis*, his fellow-convict, on Saturday last, the day originally appointed for the execution of both.

Our readers will recollect that last week we endeavoured to call the particular attention of the Executive department of the State, in whose hands, after the sentence of the law has been pronounced, are 'the issues of life and death,' to the cases of those two unfortunate men. It is satisfactory to us now to be enabled to announce that although so late as Friday last, no hope appeared for *Richard Lewis*, and preparations were made for his execution on the next day, yet in the course of the evening of Friday *a respite* was received, staying execution for fourteen days, to give time

to enquire more particularly into the circumstance of his case, there being strong grounds to suspect that the witnesses who deposed to his identity, have been, as we suggested, mistaken; and that when the *stab* was given, for which he was doomed to suffer, he was in a place which *precluded the possibility* of his being the guilty party. Depositions to this effect have, we understand, been laid before Lord MELBOURNE, by a gentleman of great respectability,* who

* Joseph Tregellis PRICE, Esq. of Neath Abbey, Glamorganshire, a most respectable member of the Society of Friends, and himself extensively engaged in the iron trade, which trade gave employment to the numerous population of Merthyr Tidvil, where the riot had happened. This gentleman, actuated by motives which reflect credit alike upon his understanding and his heart, undertook with that judgment and prudence with which he is known to act, an investigation *at Merthyr* into the facts of the case. The investigation produced in Mr. PRICE'S mind a conviction that, whoever might have inflicted the stab-wound in Donald Black's thigh, (the crime of which *Richard Lewis* had been convicted,) and whether, in the scuffle, that wound was intentional or accidental, —certainly *it could not possibly* have been *the convict Richard Lewis;* and for this reason—that *Richard Lewis* was ascertained by Mr. PRICE to have been *in another part of the crowd*, upon evidence unequivocal, unexceptionable, and satisfactory to the last degree. Mr. PRICE thereupon came off to London, expressly for the purpose of laying these facts before the Government. The House of Lords was sitting at the time; and there, in one of the passages, he was permitted an interview with Lord Chancellor BROUGHAM, hoping to obtain his Lordship's earnest mediation with Lord MELBOURNE, the Secretary then for the Home Department, to grant *a respite*. Lord BROUGHAM, however, came out again to Mr. PRICE, reporting that Lord MELBOURNE refused the respite, Mr. PRICE then requested to see Lord MELBOURNE himself. His Lordship immediately came out, listened to the facts of the case, and read the documents—walked to the Home Office, and, in the absence of the Under Secretary, without hesitation signed *a respite* of fourteen days, making Mr. PRICE the bearer of it. We state these points in justice to the character of Lord Melbourne,

was, we believe, the bearer of the petition for mercy for the two culprits, signed by *eleven thousand* persons of Merthyr Tidvil and its neighbourhood. His Lordship felt it his duty, under the circumstances, to grant the time requisite to investigate the accuracy of the statements laid before him; which, if correct, make out a complete case of *innocence* for the prisoner.

As to the other convict, *Lewis Lewis*, it is true the Judge did forward a respite for him to the 6th day of August; but since that, Lord MELBOURNE has granted a respite generally, which usually precedes the extension of the mercy of the Crown. This was the man who saved the life of a constable, as we stated last week, by exposing himself to the blows aimed at him, by which he received several bruises. The constable, we are informed, has since come forward to depose to the fact; and no doubt is now entertained that his respite will be followed by a *reprieve*, if it have not taken place already.

The petitions, so numerously signed, from Merthyr Tidvil and Cardiff, evince the deep interest which is taken in the fate of both those men; and every account which we receive from that part of the country confirms the opinion which was expressed, that the extension of mercy to both the convicts would go farther towards the effectual

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and regret that we cannot record the sequel with the same satisfaction.—Mr. PRICE hastened back to Wales with the *respite*, as only a few hours remained before the Sheriff must demand the body of *Richard Lewis* for execution. Having done this, he hoped the man was safe:—what then must have been his astonishment to hear, at the expiration of the respite, an issue which, after repeating his continued belief of the man's innocence, he communicated to a correspondent in the following terms! '*I have just learned that* '*Richard Lewis, who* WAS *hung this morning at Cardiff, declared to* '*the Chaplain and others around—audibly with his dying breath—that* '*he was innocent of the charge for which he was sentenced to die. This* '*declaration he made in the Welch language, and at the same time* '*prayed for forgiveness for all his accusers.*'—ED.

restoration of tranquillity than a hundred executions;—whereas, the taking of more lives, by the extreme rigour of the law, after so much bloodshed by the military, might give the angry feelings, which have partially subsided, a dangerous revival.—*Morning Herald, Thursday, August* 4, 1831.

The Case of William Jennings, convicted of Arson, at the Chelmsford Assizes.

While upon a subject connected with the exercise of that prerogative of the Crown which is designed to temper the harshness, and correct the errors of the stern law, we will take the opportunity of briefly alluding to the case of *William Jennings*, convicted at Chelmsford of *arson*, in having set fire to a barn containing grain, and who is ordered for execution on Friday. In this case we merely wish to call the attention of the Secretary for the Home Department to the evidence on which the verdict of *guilty* was returned, and which seems altogether too slight and vague to warrant such a conclusion. We entreat only that *execution should be stayed* for such a length of time as is necessary to investigate a case upon which considerate persons, who have paid some attention to the facts, have great doubts. There is great reason to believe that the servant girl, who swore to having seen him coming from the direction of the barn on the evening of the fire, has been mistaken. The case of *Ewen*,* who suffered for arson, last winter, at Chelmsford, and whose innocence was, afterwards, generally admitted, is fresh in the recollection of our readers.*—Let not another *irreparable error* of the sort be committed. If the law is to be acted upon, which says the guilty *shall die*, let us at least be convinced that those who die, *are* guilty.—*Morning Herald, Thursday, August* 4, 1831.

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* *Ante*, p. 100.

William Jennings is executed at Chelmsford.—COURT OF CRIMINAL APPEAL.

We have received a letter from a correspondent, relative to the case of *Jennings*, who was executed last week at Chelmsford for *arson*, and respecting whose guilt we expressed doubts, with the hope of inducing further and more searching enquiry before the sentence of the law was carried into effect. But, though few of those who attended to the particulars of the evidence were satisfied with the verdict, Lord MELBOURNE, whose mind appears so constituted as to be, with great difficulty, at any time, brought to doubt of the infallible judgment of any human tribunal, where sentence, under all the formalities of law, consigns a fellow-creature to the scaffold, was so well convinced of the prisoner's guilt, that he thought no further enquiry requisite; and so the law took its course.

Now that the man has suffered, all that human power can inflict for real or supposed guilt—now that he is gone before a TRIBUNAL that shall judge the Judges of mankind, and that no discussion of the merits of his case can have any influence on his doom—we do not think it necessary to follow our correspondent into the details of the evidence for the prosecution, which he has collected from his own observation of all that passed at the trial; but we cannot but express our concurrence in the conclusion which he has drawn—namely, that the accused was found guilty upon evidence which, taken in the abstract, would justify little more than suspicion; but which, explained by its collaterals, did away, in a great measure, with the suspicion that would otherwise attach. The fact is, the man had committed a larceny in a dwelling-house; and his anxiety to conceal the proofs of one crime, caused him to act in such a manner as to make him fall under the suspicion of having a guilty connection with the other. It is true, either of those crimes is punishable with death by our law, which is more prolific of

capital punishments, beyond all comparison, than any now known to the civilized world.

But it was not for *larceny* that *Jennings* was executed, but for *arson*. The theft which he committed, it is not now the practice to punish with death, unless some atrocious personal violence be committed, although the sanguinary law remains unrepealed. The stolen property found on the prisoner was stated to have been of the value of £25.

At the late Assizes for Bedford, two men were convicted of a burglary in the dwelling-house and shop of a silversmith, by which they swept away property to the amount of £620. They were experienced thieves—they had come down from London with some others for the purpose—they had made their entry into the house, and managed the plan, as well as details, of the robbery in the most expert and 'scientific 'manner,' shewing a high degree of 'professional skill' in this line of depredation; and yet their case was not considered to be so aggravated a one as to make it proper to shed their blood, and the sentence of death was commuted to transportation for life.

Now, let us suppose there had been no other charge against *Jennings* but the robbery in the dwelling-house, the same Government that shewed mercy to the Bedford burglars, would surely not have withheld it from him: he could not consequently have been hanged for the crime of which he *was* guilty; and he was therefore hanged for a crime of which we believe him to have been wholly innocent.

The numerous instances which have occurred, in former and in modern times, of the *fallibility* of human judgment in determining cases which involve the question of *life* or *death*, and the fatal errors with which the practice of our criminal justice has been stained, induced us, some time ago, to propose that, to diminish the chances, at least, of such irreparable mistakes, there should be a Court of *Criminal Revision*, to which all persons convicted of capital crimes, on circuit or in town, should have their cases referred for

ultimate decision, *of right*, on simply *demanding an appeal*. Such a Court would supersede the anomalous, secret, irresponsible, and inquisitorial tribunal which the Secretary of State holds at his pleasure, and in which he decides upon human life or death, without any known or certain rules. A Court of Criminal Revision (leaving *points of law* still to the fifteen Judges), under a competent and responsible authority, and with a regular procedure, appears the more requisite, when we recollect that the Secretary for the Home Department is a CABINET MINISTER, involved in political cases, and seldom or never trained to that exercise of the intellect which would qualify him for an office essentially judicial.

Did not Lord MELBOURNE decline to interfere in the case of *Ewen*, who was hanged for *arson* at Chelmsford last winter, though strong and, to many, convincing proofs of innocence were tendered?—Was not *Dyke* rashly executed about the same time on Penenden Heath?—Who can therefore doubt the necessity of a regular Court of Criminal Appeal?—*Morning Herald, Thursday, August* 11, 1831.

Remarks on the necessity of Legal Reform.

It is some years now since we first endeavoured to prove, through the agency of the Press, the necessity of *Legal* Reform. In the field which both civil and criminal justice presented for improvement, we have laboured, at least, with perseverance, and not altogether unsuccessfully. It cannot fail to be in the recollection of our readers that we exposed the expensive and absurd fictions of the law—the sham pleas—the redundant verbiage and technical barbarisms of special pleading—and, over and over again, called the attention of the public and of parliament to those gross and disgraceful defects in our system of *Civil* Justice long before the present Lord Chancellor's (BROUGHAM'S) memorable speech of six hours on the same subject, and before there

was in existence a Law Commission to investigate and report upon the state of the law, with a view to reform.

We could now, if it were necessary, shew, by reverting to what we wrote at that time, that we had pointed out many of the blemishes and absurdities in our laws which Lord BROUGHAM afterwards exposed, with his peculiar force and eloquence, in his justly celebrated speech. We mention this merely to shew that the view which we took of the state of those laws, which constitute the system of *Civil* Justice in this country, could not have been very incorrect, when it had the confirmation of so splendid and high an authority.

But we did not deal with the Civil Justice alone—we were also of opinion that the *Criminal* Justice of England greatly wanted reform—reform both in its principles and its practice. In that field of improvement, too, we have laboured. The fate which Sir Robert PEEL'S Forgery Bill, which we were the first to expose, met on the third reading in the House of Commons—the vast number of petitions presented then and since, praying for the effective amelioration of our Criminal Code—prove that PUBLIC OPINION has gone along with us in demanding the abolition of sanguinary law.

But it seems that we have not given, in all quarters, equal satisfaction. Not thinking it sufficient to confine ourselves to the discussion of *abstract principles*, we have taken *particular instances*, and illustrated the *practice* by individual cases. While labouring to improve a *principle*, we did not think it unworthy of the Press to try to *save a life*. We have contributed to the saving of some; and if we had been more successful, although an inhuman system would have been disappointed of some additional victims, justice would not have been defrauded.

It is impossible to treat of particular instances of the objectionable execution of the law, without sometimes touching on the conduct of the individuals to whom it is intrusted. We have had occasion, in this way to advert to Lord

MELBOURNE, and have thereby displeased the *Courier*, which has undertaken to become the 'schoolmaster' of the Press, and, as if to verify Lord BROUGHAM'S adage, gives lectures *de omnibus rebus et quibusdam aliis;* the 'burden' of all which is, that every man that once becomes invested with ministerial power, becomes, from that moment, infallible and immaculate. It is a prudent, but not an English, motto, that 'power can do no wrong.'

The *Courier* says, that we return to the subject of capital punishments 'too often, and too fastidiously.' There is a story, we believe, in 'Joe Miller,' touching a clergyman, who, on being accused by some of his parishioners of having 'too often preached the same sermon,' told the remonstrants, he should not have occasion to do so any longer when they 'ceased to practise the same sins.'—So we assure our Contemporary, that if our observations on the Criminal Law, and the way it is sometimes carried into effect, give pain to him, and his patrons at the Home Office, we shall desist from them altogether, when men shall cease to be hanged for crimes that *do not deserve death*, or for crimes of which there are strong grounds to believe them *innocent*. Lord MELBOURNE himself did not, we are sure, accuse us of fastidious humanity in endeavouring to *save the lives* of the *French ex-Ministers;* but what were the crimes of any of those whom he has executed, compared with theirs?—*Morning Herald, Saturday, August* 13, 1831.

First and final attempt to carry into execution the new capital law of Forgery in the case of Calvert and Collier,—convicted at the Lancaster Spring Assizes, but their sentences postponed till the GOVERNMENT *had had time to consider the subject.*

It is with equal pain and astonishment we find that the *law of forgery* is, once more, about to be put in action. That law, as far as human life is concerned, has been in abeyance ever since the memorable decision of the House of Commons, in the month of June last year, against the punish-

ment of death for the offence of forgery, [see p. 52]. It is now, however, it would seem, about to be revived in practice, and its revival celebrated within a few days, by the sacrifice of two human victims to that paper-Moloch, whose appetite for blood has, for many years past, excited so much of public disgust and abhorrence.

The two criminals who are the first appointed to die under the "amended" law of forgery, are *Calvert* and *Collier*, who had been convicted of forging bank-notes, at Lancaster, during the Spring Assizes of the present year. They had been respited during several months, or rather, we believe, their *sentences had been deferred;* but at the recent Assizes, Mr. Baron VAUGHAN had them placed at the bar, and gave them judgment to die 'according to law,' entreating them, at the same time, not to delude themselves by entertaining any hopes of mercy.

When we consider that the first instance of carrying Sir Robert PEEL'S Forgery Bill into execution occurs under an Administration, every member of which had opposed that Bill, upon the grounds, which the ablest among them so eloquently urged, of its being equally cruel in principle, and pernicious to the interests of society in its operation, we may well say that the revival of the sanguinary practice of this law, under such auspices, excites our astonishment. But however politicians may alter their opinions or conduct with their changes of position, their *recorded* sentiments change not. It is instructive sometimes to recal their past opinions, when estimating the value of the present principles of public men. Let us do so in the present instance.

In the year 1813, Earl GREY supported those Bills of Sir Samuel ROMILLY which went up to the House of Lords for the repeal of capital punishment in certain cases of the simple violation of the rights of property. In his arguments on one of those Bills—that, referring to the capital crime of *stealing to the value of five shillings in a shop*—his Lordship shewed that the severity of the law was prejudicial

to its efficacy; that the taking away life for an offence which was generally believed not to deserve death, caused fewer *prosecutions* to take place, and fewer *convictions* to follow, than if there were a milder punishment, and one more proportionate to the crime. He adduced as an *example*, the effect of the repeal of the punishment of death for the offence of *privately stealing from the person*. He said—

'In the year preceding the alteration in that law, the *convic-*
'*tions*, compared with the *prosecutions*, were in the proportion of
'*one* to fifteen; and in the year following the passing of that Act,
'they were in the proportion of *ten* to fifteen: facts which, instead
'of proving that the crime had increased, only shewed the *increased*
'*efficacy of the law*, in bringing home the crime to those who are
'really guilty of it.'

The same reasoning is applicable to the crime of forgery. The taking away life for this offence shocks the natural feelings, as well as the instructed reason, of mankind. The consequence is, that because some individuals suffer death for it, others are never prosecuted at all; and many of those prosecuted are, by the humane repugnance which Juries entertain for so severe a law, acquitted. If the punishment were milder, as in most of the States of North America, the law, upon detection, would be uniformly enforced, and the sentence invariably executed. How different from what takes place at present, when the law is ferocious in its spirit, but imbecile in its operation!

Mr. Henry SPARKES, the banker, in his letter to Sir Robert PEEL on this subject, last year,* stated several instances of persons putting up with the loss arising from forgery, rather than prosecute. Among other facts, he related that a banking firm intimated that they might be somewhat like *continually* prosecuting for the crime of *forgery*; but that, owing to the law attaching to the offence the *punishment of death*, they never for a moment entertained the idea of resorting to it. This capital law, therefore, leaves

* *Ante*, page 35.

the property of that firm, and of the one thousand bankers,* who expressed the same sentiment in their petition of last year, *wholly unprotected.*

The present Lord Chancellor (BROUGHAM), we need scarcely remind our readers, distinguished himself greatly last year in the debates upon the Forgery Bill. He exposed the barbarity and the folly of the punishment of death with indignant eloquence and uncompromising hostility. After shewing that it is the *certainty*, and not the *severity*, of punishment that deters men from crime; and having stated, that of two hundred and seventeen persons convicted of forgery in seven years, only twenty-four were capitally punished, while of ninety-nine convicted of murder in the same time, eighty-eight were executed, he went on to say—

'We are told that practical men wish the punishment of death 'to be retained; but they have come forward by the score—by the 'hundred—I may say, by the thousand—and your table groans 'under their petitions, denying the imputation—not upon their 'feelings, but upon their *good sense*. These petitions against the 'punishment of death for forgery proceed from those to whom '*paper credit* is the breath of their nostrils—from those who are 'ruined if forgery goes unpunished—and who declare it must 'generally go *unpunished* as long as *death* is inflicted for its com-'mission.'

Again, on the third reading of the Bill, Mr. (now Lord) BROUGHAM said, in reference to the small majority of placemen by whom the *second* reading had been carried—

'Would not the *punishment, if continued*, be considered to be '*branded* by the *vote* of the *Commons of England*? If the principle 'were unpopular already—if men's feelings rebelled already against 'it—what would be those feelings, that unpopularity, when the 'sentiments became settled, and fixed, and rooted in their minds, 'by the sentence of the unbiassed wisdom—the calm, deliberate 'decision, of that House?'

During the same debates, Sir James MACKINTOSH elo-

* *Ante*, page 38.

quently and truly argued that the abolition of the capital punishment would be, in fact—

'Only a return to the state of the law, as it existed previously 'to the reign of George II,—a period when the alteration in the 'law of forgery spread over Europe an idea of the inhuman spirit 'of our laws, and made the inhabitants of the different States 'believe that Englishmen valued not life, nor the blood of man, 'when they came in competition with their pelf or selfish interests. 'No law of this kind existed in the other great commercial States of 'Europe. It did not exist in France, or Holland, or Prussia; it 'was not, in fact, the law of any country from Hamburg to 'Cadiz—from the Northern to the Southern Pole of the commer-'cial world. It was this sanguinary and barbarous law that the 'petitioners now prayed the House to repeal.'

Nor should on this occasion the able and unanswerable protest* on the Journals of the House of Peers, against the punishment of death for forgery, by Lord HOLLAND be forgotten. It would be difficult to find a document more to the purpose, in point of argument, and drawn up with more force and felicity of expression. It concludes by saying—

'Because if justice enjoins the necessity of proportioning the 'punishment to the moral turpitude of an offence, prudence no less 'requires that the compassion likely to be produced by such 'punishment, should not exceed the indignation generally excited 'by the perpetration of the crime; and that the penalty should be 'regulated by the state of public opinion at the time, and in the 'country where such law is enacted, or allowed to continue: but, 'in this instance, the frequency of pardon, the numerous petitions 'of the people, and the *vote of the Commons House of Parliament*, 'sufficiently attest that the punishment by death of criminals con-'victed of forgery, is *abhorrent to the spirit of the age, contrary to 'the judgment of the public, and revolting to the feelings of the com-'munity.*'

This protest was signed not only by Lord HOLLAND, but by the Duke of RICHMOND and Lord DURHAM, members of the present Ministry.

* *Ante*, page 61.

Shall, then, the *law of forgery* be carried into effect; or the *prerogative of mercy*, which is also part of the law of England, be allowed to correct its sanguinary errors?—*Morning Herald, Friday, August* 26, 1831.

Case of Calvert and Collier, for forgery, continued.

We entreat the Government once more, while there is time for reflection, not to falsify the principles of criminal jurisprudence, which they had for years asserted—not to disappoint the just expectations of an enlightened public, and distress the feelings which their own parliamentary exertions had formerly excited in favour of a reformed system of justice, by a revival of the *capital* law of forgery. We entreat them to recollect that even Sir Robert PEEL, the author of that law, did not venture to carry it into effect, after the *punishment of death*, to use the language of Lord BROUGHAM, 'had been branded by the vote of the Commons of England.'

Will Ministers attempt to justify these examples, on the ground that they relate to worse cases of forgery than any which have come under their consideration since the passing of the present Forgery Bill? Sure we are that, bad as they may be, they are not worse than the cases of *Savary*, of Bristol, and the Rev. *Peter Fenn*—two superior offenders, whose crimes as forgers were beyond the ordinary degree of depravity; and yet Sir Robert PEEL thought it right to recommend them to the mercy of the Crown. Their sentence of death was accordingly commuted, and they were transported for life. What advantage could the interests of society have derived from their blood? Here were men of education—of respectable connections—persons not easily suspected of dishonest practices, and above that stimulant, necessity, which provokes men to crime, except such as their own folly created—here were those men convicted of forgeries to a large amount, and the sword of Justice smote them not. They

were punished in such a way as prevented a repetition of the offence against society, not by cutting them off in their sins, but by degrading banishment, where, by penitence and amendment, it was yet in their power usefully to atone for the violation of the laws of their country.

Could Sir Robert PEEL have advised the execution of such offenders as *Calvert* and *Collier*, at the time when he recommended the mercy of the Crown to be extended to *Savary* and *Fenn*? If he had done so, would it not be justly said to afford example of a most partial and capricious application of the law of capital punishment? Would it not be said, with truth, that men are hanged for forgery, or saved, not because of the greater or less degree of guilt, but because of the more or less powerful interest exerted in their favour; or because of the considerate or callous disposition of the Home Secretary for the time being?

During the discussions on the Forgery Bill last year, Sir Robert PEEL acknowledged that the Criminal Law of England, though so recently revised and amended by himself, was still the most sanguinary of any in Europe; and he made, at the same time, this remarkable admission—

> 'I have been the instrument in many cases of *mitigating* the 'severity of the law; and I can assure the House that in *no instance* 'has any obstruction of justice arisen in consequence of such 'mitigation.'

It is only to be regretted that he did not try the effect of mitigation oftener; and it is still more to be regretted that, when he went to the trouble of framing Bills to revise and amend the Criminal Law, he did not relieve the Home Secretary from the burdensome duty of attending to numerous applications for commutation of punishment, by mitigating the *law itself*, so that sentence of death could pass only in cases of such enormous atrocity, as would leave no ground for an application for mercy, except where there was reason to entertain doubts of the convict's guilt; and in such

a case, indeed, it would rather be a demand for justice than mercy.

But the present Ministers, when out of office, have argued the question of capital punishment for forgery, not as one of *degree*, but of *principle*. They objected to this punishment in all cases of forgery—both on the ground that the punishment is not commensurate with the offence, and because it is incapable of being uniformly executed; thus leaving property less protected by its capricious severity than it would be if the punishment were *moderate*, and its application *certain*.

It should not be forgotten, at this time, that, besides the *one thousand bankers* who petitioned last year for the abolition of the punishment of death in all cases of forgery, three of the greatest bill-brokers in London—namely, Mr. GURNEY, Mr. ROTHSCHILD, and Mr. SANDERSON—petitioned to the same effect.* It was stated that one of these petitioners had bills passing through his hands to the amount of from twenty to thirty millions annually, and that the whole united did not cash less than sixty millions a year! The Marquis of LANSDOWNE, in referring to this petition, said—

'I think, my Lords, three more unexceptionable witnesses—'three more important individuals, whose opinions ought to have 'weight with the House on the subject of an alteration of the law—'could not be found in the country. One of these petitioners is a 'member of the Church of England, another is a Dissenter, and 'the third is of the Jewish persuasion. I am glad to have the 'opportunity of naming these individuals, as it shews that the 'desire of seeing the abolition of death, for forgery, is not confined 'to any particular sect or denomination.'

In the year 1809, in the debate upon the Bill for the repeal of the penalty of death for *shoplifting*, Mr. WILBERFORCE, in commenting upon the *severity* of the *law*, and the *lenity* of its *practice*, said—

* *Ante*, page 34.

'The infliction of death, instead of being designated by a 'a known law, is left to the discretion of the Judge—a momentous 'trust, ever to be regarded with jealousy, and which, however 'purely it may be executed, will always have such an influence 'upon prosecutors, upon witnesses, and upon Juries, as to produce 'the *frequent impunity* of guilt.'

It is certain that the penalty of *death* for offences against property oftener terrifies the injured party from prosecuting, than the thief from depredation.

But it may be said, 'It is the *law* that has affixed the penalty of death to the crime of which *Collier* and *Calvert* have been legally convicted, and the Ministers of the Crown are bound to see the law executed.' We admit the general principle; but, as we have said before, the *prerogative of mercy* is as much the *law of the* land as any *penal Statute;* so that, where the mercy of the Crown mitigates the punishment annexed to a crime by a particular Statute, there is no departure from the general principle. The punishment of death is *according to law;* and the prerogative which substitutes a milder punishment is also *according to law.* Both cannot be exercised together—one must be destructive, *pro tanto,* of the other. It becomes then a question not of law, but of morals, or of public policy, which ought in a given case to prevail.

The Constitution vested the prerogative of mercy in the King, for the purpose of *correcting* erroneous decisions of Courts of Justice, or *mitigating* the *severities* of exterminating laws. Are *precedents* asked for in the latter case? We may mention that in the year 1808, in the discussion on Sir S. ROMILLY'S Bill to repeal the penalty of death *for stealing privately from the person,* there was only *one instance* within living memory of the capital Statute having been carried into effect. Again—in the year 1809, when the Bills to repeal the penalty of death for stealing to the value of forty shillings in a dwelling-house, and five shillings in a shop, were under discussion, it was admitted, by the speakers

on both sides of the question, that during the previous seven years no less than 1,872 persons had been committed for those offences, of whom only *one* had been executed; and it should be borne in mind that during those seven years, with the exception of *one* year, there had been a Tory Administration. Thus these laws were some time abrogated *in practice* before they were erased from the Statute-book; and these examples of a merciful dispensation, with the extreme penalties of sanguinary laws, were given by Tory advisers of the Crown.

As to the Forgery Law, we know that, if it were not for the Reform Bill, the tables of both Houses of Parliament would, this session, have been crowded with petitions for its repeal. Nay, we should consider the present Ministers bound to bring in a Bill for that purpose themselves; as their recorded opinions prove that they must regard every instance of the infliction of death for forgery as *judicial murder*. Is it possible, then, that our Ministers can allow human victims to be offered up to a law which it is their solemn opinion ought *never to have existed?*—*Morn. Herald, Monday, August* 29, 1831.

The INTENDED *Execution of the new Forgery Law defeated by the Commutation of the Sentence of Calvert and Collier.*

It is satisfactory to be able to state that the cases of *Calvert* and *Collier*—the two men convicted of forgery, and left for execution at Lancaster—have been reconsidered, and that, in consequence, *respites* have been forwarded on behalf of the convicts, with a view to a commutation of punishment.

We have already stated so fully our reasons for bringing the cases of these criminals under the particular notice of the Executive, that it is not necessary for us to say much on the subject at present; but we cannot neglect the opportunity of observing, which we omitted to do before, that about a year and a half ago, as some of our readers will probably recollect, a *Mr. Williams* was convicted at Lan-

caster, under circumstances of aggravation, of the forgery of deeds; and *though an attorney*, which greatly heightened the criminality of his acts, as well as the danger of his example, was thought a proper object by Sir Robert PEEL for receiving the mercy of the Crown. This was one of the worst cases of forgery in modern days; and certainly, to put to death the inferior criminals, *Calvert* and *Collier*, and that, too, in the same assize town where the greater and more dangerous culprit *Williams* so lately was convicted and spared, would have afforded ground for imputing to the judicial authorities, or to the King's advisers, a most cruel and capricious application of a capital law.

That the criminal law of this country must, before a very long time, be essentially reformed, so as to relieve our system of justice of the barbarous distinction which it at present enjoys, of being the most merciless of any known to the civilized world, we feel confident. But until that salutary change shall have taken place, we feel it our duty, when occasions arise, to impress upon the minds of the rulers of this country the propriety of so mitigating laws of excessive severity in practice, as to prepare for their abolition; for no beneficial result can follow from inhuman examples, which excite only sympathy for the sufferer, and shock the feelings of an enlightened community.

In all other countries pretending to civilization, distinctions in punishments are made between those crimes which are peaceable violations of the rights of property, and crimes of violence and blood. We wish to see the same principle adopted as the groundwork of our criminal legislation.

The Law of Forgery, in particular, has drawn down the strong condemnation of the most able and enlightened men of both Whig* and Tory politics, the Earl of WINCHELSEA having declared against it as strongly as Earl GREY, and

* See Extracts from the *Edinburgh Review*, relative to the Bank Forgeries, inserted at page 10.

Mr. SADLER being as decidedly opposed to it as Dr. LUSHINGTON. It is a law which, by inflicting death on some convicts, has operated as a Bill of Indemnity to the greater number of offenders—as, through tenderness of life, Juries often acquit against evidence; and, for the same reason, injured parties frequently prefer the loss of property to that redress, or rather vengeance, which sharpens the sword of the law for the sacrifice of the wrong-doer. Let the law be once altered,* so that forgery shall be punished as an aggravated fraud, by loss of liberty, with degrading hard labour in the Colonies, in the hulks, or on the tread-mill, and the fate of the *forger* will excite no more commiseration than that of the *swindler*. The victim who dies on the scaffold is pitied at the moment, and soon forgotten; but a living example is a constant warning.—*Morning Herald, Wednesday, August* 31, 1831.

Interview of a Deputation with HIS ROYAL HIGHNESS THE DUKE OF SUSSEX, *to place in his hands the* LONDON JURORS' *Petition.*

Yesterday a deputation of five gentlemen waited, by appointment, on His Royal Highness the DUKE OF SUSSEX, at Kensington Palace, to place in his hands, for presentation in the House of Lords, the Petition of Jurors of the City of London, praying for a mitigation of the Criminal Law, by the abolition of the *punishment of death* for all crimes affecting the rights of property only. His Royal Highness received the deputation very graciously, conversed with them for some time, during which he shewed a knowledge of the subject, which proved that a thorough reform of the Criminal Code had previously occupied his deep and serious attention, and finally intimated his purpose of presenting the petition on Tuesday next, and giving his best support to its prayer. This petition is signed by seven Foremen of

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* See page 65.

Grand Juries at the Old Bailey, and by upwards of eleven hundred individuals who have served, or are liable to serve, on Juries in the City of London. The presenting this petition in the House of Commons was the *last act* which the present Lord Chancellor (BROUGHAM) performed as a member of that House, where his splendid political career commenced, and which his talents so long adorned.*—*Morning Herald, Friday, September* 2, 1831.

THE DUKE OF SUSSEX *presents the* LONDON JURORS' *Petition in the House of Lords, on Tuesday, Sept.* 6, 1831.

THE DUKE OF SUSSEX—'My Lords, I rise to do myself 'the honour of presenting to your Lordships one of the most im- 'portant petitions that have ever been laid before the House; and, 'were I not satisfied that I should, at a future period, be assisted 'by several of my Noble Friends, and, I trust, by the Government 'itself, I should feel great difficulty in presenting this petition to 'the notice of your Lordships; because I am quite aware of the 'importance of the subject to which it relates, and I am no less 'conscious of the inadequacy of my own powers to bring it forward 'with that impressive force which its deep interest deserves.

'The petition which I am about to present to your Lordships, 'prays—

> —'that your Right Honourable House will take the Criminal Laws into 'your consideration, for the purpose of the *revision* and *amendment* of the 'same, by drawing a distinction between the simple invasion of the rights 'of property, and crimes of violence and blood, and by abolishing the 'penalty of *death* in all cases in which the legislative power cannot justify, 'in the eyes of GOD and man, that last and dreadful alternative—*the 'extermination of the offender!*

'This petition is signed by (among others) seven individuals, 'who, in the course of the last year, have filled the situation of 'Foremen of seven successive Grand Juries, for the County of Mid- 'dlesex, at the Old Bailey. It is also signed by upwards of eleven 'hundred merchants, traders, &c., all of whom either have served, 'or are liable to serve, as jurors. The total number of indi- 'viduals who have signed this petition is very large; but we must

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* For Mr. BROUGHAM'S Speech on that occasion, see page 90.

'go further—we must look to the property of the petitioners; and 'when we see ninety-one names, on the first skin of the petition, 'of merchants and others, whose annual returns in trade amount 'to no less a sum than *ten millions* sterling, I think I have stated 'to your Lordships sufficient to convince you that this petition is 'entitled to great consideration and respect. These respectable 'persons state to your Lordships their own private feelings, and 'the situation to which they are frequently reduced in fulfilling 'their painful duties.'

HIS ROYAL HIGHNESS having made some further observations, proceeded to say—

'It appears to me, that many offences might be successfully 'punished by imprisonment, and by other similar means; and I am 'quite convinced that the country would be greatly benefitted, if, 'while the laws adequately punished criminals, endeavours were 'made, at the same time, to *reform* their moral character, and to 'render them ultimately fit persons to re-enter society. I will say 'further, that, to accomplish such an object, it would be right, so 'far as every man has it in his power, to assist in cultivating con-'scientious feeling and religious principle. I look with confidence 'to this point, that Government will, so far as may be reasonable 'and practicable, attend to what I have stated. *I would further add*, '*that a more forcible or powerful appeal was never made than that* '*which is contained in this petition.* I beg leave to call most parti-'cularly the attention of my Noble Friend at the head of the 'Government to this question; and to state, that *whenever it comes* '*before the House, I shall give every support in my power to the argu-*'*ments used in the petition. This is not a novel subject to me, but* '*one which I have, for many years, much weighed and considered.* I 'have not, it is true, touched on it in this place before; but such 'a petition as this having been put into my hands, I have deemed 'it necessary to say a few words on the subject, and to declare 'that I feel great pride in laying it before the House. I will read 'the petition myself to your Lordships, with the permission of the 'House, from a printed copy which I hold in my hand; while the 'Clerk can look over the original, to see that I state it correctly. 'But I must first make one further allusion, with reference to the 'capital convictions in England and in France, of which latter 'kingdom the population is much the greater, by quoting a docu-

'ment, shewing a comparative statement of these important facts, 'which I have no doubt will be listened to with attention, and 'excite much surprise. In 1825, the number of persons con- 'victed of capital offences in England and Wales (for the return 'does not include Ireland) was 1036. In France, in the same 'year, the number of persons convicted of capital offences was 134. 'In 1826, in England, 1203; in France, 139. In 1827, the number 'was larger here than at any other period, being 1529; in France, '106. In 1828, in England, 1165; in France, 111. In 1829, in 'England, 1385; in France, 83. Your Lordships will see the 'extremely small proportion of capital convictions in France, where 'the population is so much larger, as compared with those which 'have taken place in England and Wales only; and I hold that 'this fact alone is a sufficient proof, if any were wanting, of the 'greater severity, but, at the same time, of the far greater ineffi- 'ciency of our Criminal Code to prevent the increase of crime. I 'will now read to your Lordships the Petition of Inhabitant House- 'holders of the City of London, for abolishing the Punishment of 'Death in certain cases; and when I have done this, I shall leave 'the matter in the hands of His Majesty's Government with per- 'fect confidence.'

'*To the Right Honourable The Lords Spiritual and Temporal of the United* '*Kingdom of Great Britain and Ireland in Parliament assembled,*

'The PETITION of the undersigned *Inhabitant Householders* of the City 'of London, liable to serve as JURORS,

'Humbly Sheweth,

'That your Petitioners view, with deep regret, the excessive and indis- 'criminate severity of the Criminal Laws, which annex to offences of '*different* degrees of moral guilt the punishment of DEATH, and confound 'the simple invasion of the rights of *property* with the most malignant 'and atrocious crimes against the person and the *life* of man.

'That the recent Acts, passed with the professed intention to amend 'and improve the Criminal Laws, have not remedied the evil of which 'an enlightened community have the greatest reason to complain, but 'have still left those laws a disgrace to our civilization, by retaining the 'opprobrious distinction of being the most sanguinary of any in Europe.

'That Christianity, common reason, and sound policy, demand that 'the laws, which affect the liberties and the lives of men, should *proper-* '*tion the punishment to the offence*, and not teach cruelty to the people by 'examples of vindictive legislation.

'That where public opinion *does not go along with the laws*, the 'persons who suffer under them are regarded as the victims of legislative

'tyranny, or judicial caprice, and not as criminals whose doom has been 'pronounced by the voice of dispassionate justice.

'That the criminals executed in this country are selected out of a far 'greater number sentenced to death; and where *the practice* condemns *the* 'law, the law ought to be altered, that criminals might suffer the punish- 'ment of their guilt by the authority of *defined statutes*, and not by the 'uncertain and capricious rule of *judicial discretion*.

'That in the present state of the law, JURIES feel extremely reluctant 'to convict where the penal consequences of the offence excite a conscien- 'tious horror on their minds, lest the rigorous performance of their duty as 'Jurors should make them accessory to judicial murder. Hence in Courts 'of Justice a most unnecessary and painful struggle is occasioned, by the 'conflict of the feelings of a *just* humanity with the sense of the obligation 'of an oath.

'That Witnesses also are very frequently reluctant to give evidence, 'as well as Juries to convict, lest they might bring upon their consciences 'the stain of blood; and thus criminals who, under a more rational and 'considerate code of laws, would meet the puniahment due to their crimes, 'escape with *complete impunity*.

'That, for these reasons, your Petitioners humbly pray your Right 'Honourable House to take the Criminal Laws into your consi- 'deration, for the purpose of the *revision* and *amendment* of the 'same, by drawing a distinction between the simple invasion of 'the rights of property, and crimes of violence and blood, and 'by abolishing the penalty of DEATH in all cases in which the 'legislative power cannot justify, in the eyes of GOD and man, 'that last and dreadful alternative—*the extermination of the* 'offender!'

(Signed by the different Foremen, respectively, of seven Old Bailey Grand Juries of* 1830, *and by upwards of* 1100 *Merchants, Traders, &c. who either have served, or are liable to serve as Jurors.)*

The DUKE OF SUSSEX having sat down, the Lord Chancellor BROUGHAM rose, and in a speech of some length expressed some opinions on the punishment of death, very different from those the public had long given him credit for. The conclusion of his speech was addressed to that part of

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* *Eight* Old Bailey Sessions in the year were held at this period. Hence *seven out of the eight* Foremen of Grand Juries signed the Petition presented by the DUKE OF SUSSEX. We have great satisfaction in here recording the names.

Nathaniel PALMER, Esq.....	Foreman Grand Jury,	*January Sessions*,	1830
William Parnell TYARS, Esq.	Foreman Grand Jury,	*February Sessions*,	
Samuel BOWRING, Esq.	Foreman Grand Jury,	*May Sessions*	
John PHIPPS, Esq.	Foreman Grand Jury,	*July Sessions*	
John DRINKALD, Esq.	Foreman Grand Jury,	*September Sessions*,	
Samuel M'DOWALL, Esq.	Foreman Grand Jury,	*October Sessions* ...	
Hon. William FRASER.....	Foreman Grand Jury,	*December Sessions*,	

ERRATUM in this volume—page 80, line 26, for *seven* read *six*, as originally reported in the *Times* Newspaper. The Petition to the LORDS bears the seventh name, but not that to the COMMONS, as the dates will prove.—ED.

the petition, in which the Jurors state their reluctance to convict where the consequences would be the unnecessary shedding of human blood: and it forms so remarkable a contrast, with what his Lordship had stated on the same point (when he himself, in the previous session, in presenting *the same* petition in the COMMONS, stated it to be both 'ably expressed,' and worthy of attention on account of 'the reasons it contained,' as well as 'the authority of the petitioners,'—see page 80,)—it forms so remarkable a contrast, that we think it right to give insertion to the following passage from the *Mirror of Parliament*:—

'I must say (continued Lord BROUGHAM) that if there be any 'course likely to prevent the legislature from interfering, it appears 'to me that it would be this, where individuals take the matter 'into their own hands, and out of that of your Lordships. If the 'law be defective, as I am bound to think to a certain extent it is, 'and if it be necessary that in that respect it should be amended, 'as I admit it ought, and I have no doubt it will be—I say, that 'the only manner in which that law ought to be so altered and 'amended is, by the interference of those who have the right to 'interfere—the King, Lords, and Commons of England; and until 'that period arrives, I say, these individuals have no right to contravene the law, but, in obedience to their oath, they are to find 'the person Guilty or Not Guilty, according to the evidence, and 'that the prisoner thereupon must be liable to the consequences 'of his act, under the law as it at present stands.'*

* What a contrast, too, does this speech of the Lord Chancellor form with the following extract from an article in the *Edinburgh Review* for 1827, attributed to the pen of Mr. BROUGHAM, when a writer for that Periodical:—

'The Judges and the parliament would have gone on to this 'day, hanging by wholesale, for the forgeries of bank-notes, *if* '*Juries had not* become weary of the continual butchery, and *resolved* '*to acquit*. The proper execution of laws must always depend, in 'great measure, upon PUBLIC OPINION; and it is undoubtedly '*most discreditable to any men intrusted with power*, when the 'governed turned round upon their governors, and say, "Your 'laws are so cruel, or so foolish, we cannot, and *will not* act upon 'them." '—*Edinb. Rev.* vol. 45, p. 76.

[The part which the Lord Chancellor took in this debate was so unexpected by the public, that it created a topic of considerable interest, as may be seen on reference to the Newspapers, both Whig and Tory, of the day. The subjoined extracts, from the *Morning Chronicle* and the *Standard*, are particularly deserving of attention.—ED.]

Strictures of the Public Press upon Lord BROUGHAM'S *Speech in reference to the London Jurors' Petition.*

REMARKS, *from the Morning Chronicle.*

If Jurymen had acted on the principle recommended by his Lordship, all we can say is, that blood would still be poured out like water in this country; for the higher ranks clung to sanguinary punishments so long as Juries would convict.

But is it so clear that a man who, as a juror, is instrumental to the execution of a sanguinary law—a law which outrages all the best feelings of our nature—is in no respect himself guilty? In this case, the man who, in obedience to a decree of the Inquisition, subjects the victim to horrors at which humanity shudders, is guiltless. In most countries, the laws have been the means for working oppression; and the oppression has been only mitigated by the repugnance of virtuous and humane men to give effect to them. To this repugnance we are chiefly indebted for the ameliorations which have taken place in society. We suspect they were under a safer guidance than the casuistry of the Noble and Learned Lord.—*Morn. Chronicle, Wednesday, Sept.* 7, 1831.

REMARKS, *from the Standard.*

The *Morning Chronicle* has with characteristic ability handled that part of Lord BROUGHAM'S speech in which he inculcated the duty of Jurors aiding to put men to unmerited disgrace and death, because they are sworn to give a true verdict. We shall therefore leave this part of the subject in

the hands of our Contemporary, and proceed to the fallacies of the Lord Chancellor that are more obvious, and therefore more within our power to expose. The Noble and Learned Lord, by way of discharging the question of all religious difficulty, triumphantly interrogated the House as follows:—

'He would ask any Noble Lord who heard him, to point out in 'what part of Scripture he found a warrant for the punishment of 'death in cases of murder, and a prohibition of that punishment 'in other cases? He was well aware of the permission which the 'Scriptures gave for the infliction of the punishment, for he had 'often quoted it; but where was the prohibition to be found?'

The prohibition is to be found in the sixth commandment, which says to all men, to sovereigns as well as to subjects, 'Thou shalt not commit *homicide*.' Such is the strict translation of the words employed, and not as our Old Testament version gives it, 'Thou shalt do no murder;' nor yet as it stands in the New, 'Thou shalt not kill:'—the Hebrew verb רצח signifying strictly to commit homicide, and not always homicide with malice, which is the interpretation of our English word *murder;* nor the mere act of killing, which may be applied to the destruction of animals as well as man. So much depends upon the right understanding of this one word, that we hope we shall be acquitted of pedantic affectation in fixing an exact translation.

The sixth commandment, then, forbids the commission of homicide; it forbids it without qualification—forbids it to societies as well as to individuals; and Lord BROUGHAM may as well pretend that political bodies can qualify or repeal the *first* commandment, or the *second, third, fourth, fifth, seventh, eighth*—in short, the whole *decalogue*, innocently, as that they can qualify or repeal the injunction of this commandment. Surely Lord BROUGHAM will not pretend to say that, though atheism may be connived at—though idolatry may be legalized—though the sanction of marriage may be made light of—he will not pretend to say that the commandments forbidding atheism, idolatry, and adultery,

are therefore abrogated, or the prohibition 'nowhere to be found.'

The Lord Chancellor, indeed, cites against the authority of the sixth commandment, the authority of Leviticus; but does his Lordship remember the commission of the legislator of Leviticus?—or rather does he recollect that the Almighty was himself the author of the Levitical law, of which Moses was merely the mouthpiece?

Taking, therefore, our ground upon the Old Testament, we say that the rule is universal—'Thou shalt not commit homicide.' To this rule there are indeed, first, the exceptions of the Levitical law, which inflicts death, chiefly for crimes of impiety, and for abominations connected with the prevailing depravities of the neighbouring pagans, which, therefore, were inducements to apostacy as well as substantive crimes; second, the Noachid precept, which enjoins the shedding of the murderer's blood, that the blood of those who are not murderers may be spared.—*Standard, Wednesday, September* 7, 1831.

REMARKS, *from the Morning Herald.*

When Mr. (now Lord) BROUGHAM presented, in the House of Commons, the petition of the Jurors of London, praying for an efficient reformation of the Criminal Code, with a view to the abolition of capital punishments for all crimes against property, he gave it his decided and unqualified approbation and support.* He saw then nothing in it to cause him to read a lecture to Jurors on the violation of their oaths; but a great deal to make their opinion, on the necessity of a revision of the law, worthy the serious attention of the legislature. Is it possible that the air of the House of Lords can have so improved the acuteness of his faculties, as to enable him to perceive blemishes in that petition, which he was incapable of perceiving ten months

* We have inserted Mr. BROUGHAM's Speech at p. 89.—ED.

ago? We know there are many memorable instances of the strange changes which can be wrought upon the moral perceptions and opinions of men by the influence of an aristocratic atmosphere; but as it is impossible to believe that the great intellect of Lord BROUGHAM can be swayed by the circumstances which enslave inferior minds, we must content ourselves with stating the fact which we have above alluded to, without pretending to divine the cause.

Certain it is, that on the 19th of November last, Lord BROUGHAM presented to the House of Commons a petition signed by the same parties, and couched in precisely the same language, as that which His Royal Highness the DUKE OF SUSSEX has, with an unostentatious sincerity of manner, which does him the greatest credit, presented to the House of Peers.

On that occasion Lord BROUGHAM introduced the subject by saying, he had a petition to present which he felt greatly honoured by being intrusted with, and to which he begged the particular attention of the House. He described the petition as one 'very ably and clearly expressed;' and having stated the prayer of the petition, and informed his hearers of the class of persons by whom it was signed, and who had *practical* experience of the inefficacy of sanguinary laws, he proceeded to say—'the petition was worthy the attention of 'the House, on account of the reasons it urged, but more 'especially on account of the *authority of the petitioners*; for 'who were so competent to speak of the scruples of Juries as 'they who had felt those scruples?'

Lord BROUGHAM having concluded, Mr. WARD, then one of the Members for the City, rose, and bore testimony to the respectability of the petitioners;—after whom Sir Thomas (then Mr.) DENMAN* got up, and emphatically declared

* Now, Lord DENMAN, whose duty it is, as Chief Justice of England, to advise THE KING IN COUNCIL upon the execution or commutation of the sentence of death, when the Report of the RECORDER of London is taken into consideration.—ED.

that this was one of the most important petitions that had ever been presented to that House, and that it deserved the serious attention of every Honourable Member. He added, what we shall give in his own words—

'The House will now see it is a fact that Jurors are not 'unfrequently placed in the miserable and painful dilemma of re-'fusing to declare the fact, as the oath they have taken requires 'them to do, or consenting to administer a law which they believe 'to be cruel and unrighteous. I know it has been stated by 'authority which, though high, is not very competent to judge of 'the matter, that Juries do not feel any scruple to administer the 'law; but the House has now the *most competent authority* in con-'*tradiction to that statement.*'

Such were the unqualified declarations of the present Lord Chancellor and Attorney-General in favour of the London Jurors' petition against capital punishments in the month of November last year. The laws remain the same—the mischief remains the same—the reasons for altering the laws remain the same—the opinions of the Jurors remain the same; but the opinion of the Lord Chancellor is so far changed, that he, who formerly said—'who were so 'competent to speak of the scruples of Juries as they who 'have felt those scruples?'—now says—that Juries ought to *feel no scruples* whatever; that, if the law unreasonably or iniquitously takes away life, they should feel no compunctions of conscience—no shudderings of nature—no humane hesitation at finding themselves made accessory to judicial murder; but should proceed to *slay*, according to evidence, with as much coolness of judgment, and firmness of nerve, as if they were only summoned to perform the duties of a righteous system of justice, instead of being called upon to act as the ministers of Vengeance, and gratify that vindictive demon in its appetite for blood!

The petition states that—

'In the present state of the law, Jurors feel extremely reluc-'tant to convict where the penal consequences of the crime excite 'a conscientious horror on their minds, lest the rigorous perform-

'ance of their duty as Jurors should make them accessory to 'judicial murder. Hence, in Courts of Justice, a most unnecessary 'and painful struggle is occasioned by the conflict of the feelings 'of a *just* humanity with the sense of the obligation of an oath.'

Is this an admission on the part of the petitioners that, when serving as Jurors in capital cases, they perjure themselves, to acquit the accused? No such thing—the petitioners only state the *struggle* which exists in such cases between their dread of being accessory to judicial slaughter, and their sense of the obligation of an oath. They pray the legislature to relieve them from that painful conflict between their consciences and their feelings; yet Lord BROUGHAM has chosen to lecture them, as if they had admitted, in their petition, that they violated their oaths, to save themselves from the horror of assisting in the unnecessary sacrifice of human life.

That Jurors, however, have frequently evaded their oaths, rather than deliver up men to the executioner for crimes which ought not to be punished with death, is a matter of public notoriety;* and, what is more, they have

* If any further proof were required, it would be supplied by the following RESOLUTIONS of the COMMON COUNCIL OF LONDON, at a meeting twelve years before, when the subject was publicly discussed at Guildhall; *viz.*—

'RESOLVED—That some *Jurymen submit to fines rather than act as* '*arbiters of life and death*, in cases where they think the 'punishment of death ought not to be inflicted.

'RESOLVED—That some Jurymen are deterred from a strict dis- 'charge of their duty, and *acquit guilt*, or *mitigate the offence*, 'so as not to subject the offender to the punishment of *death*, 'and thus assume a discretion never intended to be vested in 'Juries, and relax the sanctity of a judicial oath, upon which 'the Trial by Jury much depends.

'RESOLVED—*That this determination by Juries* to oppose the severe 'enactments of our laws, *is of daily occurrence*.'

(*See Report of Resolutions* '*at a* COMMON COUNCIL, *holden in* 'the GUILDHALL *of the City of* LONDON, *on Thursday, the* 10*th day* 'of *December*, 1818.—ATKINS, *Mayor*.')

often been countenanced in so doing by Judges of the land. Does it follow that any person who states this fact, as a reason for an alteration of the law, is an advocate for the crime of perjury? If so, Lord BROUGHAM was himself, at one time, an advocate for the commission of that offence; for, as we have shewn, he made the *scruples* of Jurors to convict, an argument for the reformation of the Criminal Laws.

The case is put strongly, but justly, by a morning Contemporary (the *Chronicle*), which says—

'If Jurymen had acted on the principle recommended by his 'Lordship, all we can say is, that blood would still be poured out 'like water in this country; for the higher ranks clung to sanguinary 'punishments so long as Juries would convict.'

Yet the *Courier* insinuates this is an encouragement to perjury. It is, however, only the statement of a fact which, to the disgrace of our criminal laws, admits of no refutation.

We have the high authority of Sir William BLACKSTONE for this, upwards of sixty years ago. That most upright Judge, and able commentator on the laws, states the melancholy fact in the following words:—

'So dreadful a list (of capital punishments) instead of diminish-'ing, increases the number of offenders. The injured, through 'compassion, will often forbear to prosecute; *Juries, through com-'passion, will sometimes forget their oaths*, and either acquit the 'guilty, or mitigate the nature of the offence; and Judges, through 'compassion, will respite one-half the convicts, and recommend 'them to the Royal mercy. Among so many chances of escaping, 'the needy and hardened offender overlooks the multitudes that 'suffer. He boldly engages in some desperate attempt to relieve 'his wants, or to supply his vices; and if, unexpectedly, the hand 'of Justice overtakes him, he deems himself peculiarly unfortunate 'in falling at last a sacrifice to those laws which long impunity 'had taught him to contemn.'

Such is the testimony which that great and learned Judge, Sir William BLACKSTONE, bears to the evil working of our sanguinary laws, and the temptation which they

throw in the way of Jurors to commit what he has elsewhere denominated 'pious perjuries;' as if the saving of life from the sword of barbarous laws, in some measure sanctified an offence which would be otherwise of a heinous complexion. If men are tempted to commit those 'pious perjuries' by the law, as they undoubtedly are, the crime is with the legislators; and the sin of encouraging it does not rest upon those who pray for such an alteration of the law as may remove that temptation for ever.—*Morning Herald, Saturday, September* 10, 1831.

Struggle between the Law and the Consciences of Jurymen, exemplified in the recent case of James Robinson, tried at the Old Bailey.

The recent trials [13th instant] at the Old Bailey Sessions of *James Robinson*, for robbing his employers, Messrs. East and Co., of goods to a great amount, were strikingly illustrative of the *working* of our criminal laws, and furnish a practical commentary upon Lord BROUGHAM'S lecture to Jurymen on the nature and obligation of the Jurors' oath.

The prisoner was first tried on an indictment charging him with having stolen goods to the value of £1,000. The evidence went to shew, that, if he stole goods to any amount of the property of his employers, he stole to the value of at least several hundred pounds. It was proved, indeed, that property of the value of £300, which he had feloniously abstracted from the premises of Messrs. East, was found in possession of one individual, to whom he had sold it; and more of the property, estimated at £200, was discovered in a room in the prisoner's own occupation.

Thus it was evident that, if he stole *any* of the goods laid in the indictment, he stole *to the value of* £500. The Jury found him guilty of stealing—*under* £5!

On a second indictment, where the goods were laid at the value of £25, the Jury again found him guilty of stealing *under* £5.

There were three or four other indictments against the same person, each of which charged him with a capital offence; but the prosecutor, admonished, we presume, by the result of the former trials, offered no evidence in support of the capital charge, but allowed the prisoner, in each instance, to have a verdict of conviction recorded against him, on his own confessional plea, of having stolen property *under £5*.

These verdicts are accounted for by a reference to the state of the law, which demands that the *life of man* shall be sacrificed for stealing in a dwelling-house to the amount of £5. Before Sir Robert PEEL's revision of the Criminal Code, the punishment of death was inflicted for stealing to the amount of forty shillings in the dwelling-house. This offence was *first* made *capital* by a Statute passed in the twelfth year of Queen Anne. If the law of Queen Anne had still remained in force, we presume the Juries that tried Robinson, would, instead of finding him guilty of stealing under the value of £5, have limited the sum to thirty-nine shillings, as was a *common practice* at the Old Bailey while that law remained on the Statute-book; nay, so far was this carried, that, in one instance, a woman having been convicted, on the clearest evidence, of having stolen a Bank of England note for £10, the Jury found the note to be only of the value of thirty-nine shillings; the Jury considering that their oath did not bind them to become the blind and ruthless instruments of the exterminating barbarism of the law.

It is fresh in the recollection of the public that, under the present Administration, a man* was executed for stealing in the dwelling-house above the value of £5. The Jury who tried Robinson, no doubt, expected that a similar fate awaited him, and therefore did not leave the delinquent's life to the 'tender mercies' of the Recorder and the Secretary for the Home Department.

Notwithstanding the lecture of Lord BROUGHAM, such

* *John Broach*, executed at the Old Bailey, May 25, 1831, *Ante*, p. 125.

laws can never be thoroughly executed, unless we can always have, to use the words of Lord BYRON, 'twelve butchers for a Jury, and a JEFFRIES for a Judge.'*—*Morn. Herald, Saturday, September* 17, 1831.

Attempt to legalise again the barbarous practice of setting Spring-Guns as a protection to property.

When Viscount MELBOURNE stated, in the House of Lords, that Government were devising means for the more effectual protection of agricultural produce, and other farming property, from the acts of secret incendiaries, we supposed that Government were, at length, about to try what effect the *improvement of the wretched condition of the labouring classes* would have in restoring to property of this description, that security which was not broken down until the actual cultivators of the soil were reduced from a state of comfort and comparative independence, to degrading destitution. The causes which destroyed the moral pride and self-respect of an honest and manly peasantry, rendered the property of the owners and occupiers of the soil insecure; for its true protection was gone, when abject distress banished the comforts and decencies of life from the poor man's cottage, and drove the rural virtues from the land.

There is no moral truth more certain than that good Government never demoralized an honest people, nor drove a well-ordered population into acts of madness and despair. And where does there exist a country which, until of late years, possessed a better-ordered, a more virtuous, decent,

* These words are extracted from an admirable speech delivered by Lord BYRON, in the House of Peers, on the 27th of February, 1812, in opposing the *Nottingham Frame Bill*. It is creditable to the memory of a young nobleman so distinguished for his genius, that the *first* effort of his parliamentary eloquence was to resist a motion for adding a new capital statute to our sanguinary code.

nd manly peasantry than England did? What a deplorable change has taken place!—and what a deplorable series of errors and vices in Government have led to it! The riots and burnings of last year were the acts of a population who had ost all affection for their superiors, though they did not shed their blood; and who had lost all confidence in their rulers, though they entered into no plan of political insurrection. Was it because their labours were adequately paid, hat they lost their affection for their employers? Was it because their petitions of distress were listened to, and means taken by a paternal Government to alleviate it, that hey lost all confidence in their rulers? The parish-books will furnish an answer to the one question, and the records of a deceased parliament the other.

But, instead of attempting to remove the *causes* of the rimes against property, which have of late prevailed among he peasantry of England, Lord MELBOURNE contents himself with trying experiments of legislative quackery upon heir *effects*. England has been already afflicted with too many of those statesmen who have no idea of preventing any rime which happens to be prevalent, but by adding new errors to vindictive law, or by reinforcing with new enactments of blood a Criminal Code already disgustingly profuse f sanguinary punishments. It never occurred to his Lordhip that, if Government think it too difficult and laborious task to set about bettering the condition of the peasantry, here was one mode of rendering the law, which punishes rimes against property, more effective than it is at present, nd that is, by rendering it *less* barbarous, so that the comon feelings of mankind would be less shocked by seeing it arried into effect; and there would not be among a civilized nd Christian community the repugnance which now exists o be accessory to its enforcement, and which so often preents the injured party from prosecuting, makes witnesses eluctant to give evidence, and renders Juries averse to onvict.

At present the *highest* punishment that man can inflict on man is the sentence of our law for burning wilfully houses or other property. From the castellated mansion to the heap of straw in a lonely field, no distinction is made; and outrages differing widely from each other, both in moral guilt and social danger, are visited with one exterminating doom. Yet so ineffectual has the merciless law been found to be, that the crime of *arson*, or wilful burning, has *increased under* it to a degree which, we admit, has become alarming to society. So much for the *efficacy* of exterminating law! So much for the results of that sort of penal legislation, which sets up in the temple of august and godlike Justice, the grim idol of Revenge; and, satisfied with performing the rites of blood which it demands, cares nothing for the moral prevention of crime!

Lord MELBOURNE, not being able to raise the penalty for *arson*, committed under any aggravations, higher than it is at present, proposes to allow magistrates to have a power to grant licences to set spring-guns about premises where there are stacks of corn, and other agricultural produce, which it is possible to destroy by fire.

The spring-gun is a barbarous invention, which only a few years ago had been put down by the force of public opinion. The practice of secreting upon premises this and other deadly inventions, had been productive of more injury to *innocent* persons than to *guilty* ones; and even the individuals that set them, sometimes perished by their own contrivances. We gave our assistance in procuring the abolition of a mode of preventing crime, clumsy and inhuman enough to be a disgrace to New Zealand; and can we in silence see a Bill brought into parliament to revive what is nothing more nor less than the practice of *assassination by machinery?*

We have full as great an abhorrence of the crime of *arson* as Lord MELBOURNE has; but it is not by endangering the lives of the innocent, and covering the land with

engines which resemble our Criminal Laws in being *snares for human life*, that we would strike at the offences of the guilty.—*Morning Herald, Monday, September 26, 1831.*

Lord MELBOURNE'S *Spring-Gun Bill opposed by* Sir Robert PEEL.

The caustic observations which Sir Robert PEEL indulged in the other evening on that splendid specimen of penal legislation, the *Spring-Gun Bill*, were not too severe for the subject that called them forth. If any thing could make Ministers in general, and Lord MELBOURNE in particular, ashamed of adding to a Statute-book, that breathes in all its pages the spirit of barbarism, a new law founded on a principle equally absurd and inhuman, it would be the taunting remarks with which it supplied Sir Robert PEEL, at the expence of the consistency of the Whig Statesmen, who, when out of office, had so long professed a most virtuous and uncompromising zeal in the cause of rational and enlightened Criminal Jurisprudence.

It is melancholy to think that the possession of power should have such a fatal influence upon the understandings of men, that the politicians, who had made it a point of duty, as it were, to assail the legislation of Sir Robert PEEL, should have furnished the legislator, whose capacity they impugned, and whose reputation they attacked, with the best apology for all that was objectionable in his works, by surpassing, in their *first* effort of penal legislation, his *least rational* examples. It was, if we mistake not, upon *principle*, that the Whigs a few years ago advocated the abolition of spring-guns, as a barbarous and atrocious invention, unfit to have the sanction of law in any age, or in any country; and yet the Whigs have not been a year in office, when we find the national character is again to be disgraced, and the name of preventive justice desecrated, by a revival of this most treacherous and cowardly contrivance to shed the

blood of man, by a process of assassination which cannot make any distinction between the innocent and the guilty.

Well might Sir Robert PEEL say that—

'When the present Government was formed, he certainly expected that some very enlightened system of jurisprudence would have been adopted; but what was his astonishment to find that the only measure which Ministers had proposed, relative to the Criminal Laws, was a revival of the law which allowed *the setting of spring-guns!* It was cruel that the monument which had been erected to the Honourable Member for Stamford, in honour of his exertions for the abolition of spring-guns, should thus be undermined by his own friends.'

Never was there a bitter sneer more richly deserved. If Lord MELBOURNE do not feel it, he must, indeed, be gifted with a moral constitution invulnerable to the force of cutting reproof.

We have said that this *assassination by machinery* is equally absurd and inhuman. It is absurd, notwithstanding the solemn *dictum* of the *Courier* on that subject, as a *protection* to property against fire; for, without taking into account what a Morning Contemporary has observed, as to the discharge of a spring-gun itself being a probable cause of setting the stack on fire which it was set to guard, we would remind our readers that the burnings in general, which took place last year in farmer's stack-yards, occurred under circumstances which induced the belief of something having been *projected from a distance* into the stacks and other agricultural property so consumed, which made it unnecessary for the guilty party to enter the premises, in order to effect the work of destruction.

But under all circumstances, and whether the incendiaries find it necessary to enter the premises, or not, we contend that the diabolical contrivance of the spring-gun is more likely to destroy the lives of the innocent than the guilty. The man who has guilty intentions, will be wary and circumspect; where the man who meditates no harm,

will be careless. The one will contrive means of destroying the property with as little risk as possible; while the other will walk into the ambuscade of a spring-gun from mere thoughtlessness. When spring-guns used to be set in *preserves*, not only mere trespassers and nut-gatherers often perished by them, but even the very gamekeepers that set them, sometimes fell victims to the blind vengeance of their own arts. But in the meantime the *game* was not the more *secure*, or the poachers the less successful. If there be a *notice* in the day-time, of what avail can it be in the night—or even in the day, to a child or illiterate person? In short, nothing can exceed the barbarity of this contrivance, as a *protection to property*, but its folly.—*Morning Herald, Saturday, October* 1, 1831.

The Spring-gun Bill defeated.

The next best thing to taking, in the first instance, a wise course, is to abandon a foolish one. The attempt to secure property from the destructive acts of incendiaries, by legalizing the murderous contrivance of spring-guns, was a most absurd measure for any Government to adopt; but it was worse than absurd in a Whig Government to have recourse to a measure of that description. If the Whigs were pledged, by previous professions of political faith, to any improvement in the institutions of the country, they were most especially pledged to a reformed system of Criminal Jurisprudence. From the time that ROMILLY first applied his great and powerful mind to the amelioration of our penal code, the Whigs took up the question as one deserving of being identified with their policy; and thenceforth the reform of the Criminal Law in reference to the punishment of *death*, became one of the cardinal articles of their parliamentary creed.

While ROMILLY lived, the leading members of the Whig party in parliament at that time, some of whom are among

the leading members of the present Administration, did undoubtedly support his propositions, and enforce his doctrines with energy and talent. Earl GREY and Lord HOLLAND, aided by the eminent abilities and accomplished eloquence of Lord GRENVILLE, fought well the battle of enlightened justice in the Upper House of the Legislature, whenever any of the Bills introduced by ROMILLY into the House of Commons, found their way to the hereditary legislators of the land. In the Lower House, Mr. (now Lord) BROUGHAM, with Mr. PONSONBY, and the Whig Party in general, to whom, on this question, were joined Mr. WILBERFORCE, and the then distinguished Master of the Rolls, Sir William GRANT, gave the propositions of ROMILLY a support always triumphant in argument, and sometimes successful in the numerical superiority of a division. Since the time of the latter, Sir James MACKINTOSH was constituted the leader of the question, and made one or two speeches of considerable power in its behalf; but, as to any practical results, the cause miserably languished, and nothing important took place until the decision of the House of Commons against the capital Forgery Bill of Sir Robert PEEL.—[See pages 52 and 65.]

As to the barbarous and cowardly practice of setting spring-guns, it had been cried down by general consent; and little did we think that the inhuman invention, which had been abolished under an 'illiberal' Government, would have been attempted to be revived by a Whig Administration.

In a country where, in consequence of the readiness with which the legislature sacrifices human life, murder has become so familiar as no longer to startle us by its enormity, we did not expect that a 'liberal' Government would have added to the *judicial* murders of the law *other* murders, no matter whether of *innocent* or *guilty* persons, by an apparatus of extermination, contrived for the purpose of slaughtering human beings *without the intervention of Judge or Jury*. Mr. FINLAY, on the *Law of Game*, justly says,—

'Better that it should be lawful to kill a trespasser, face to 'face, than to place engines that will kill him. In the former case, 'he might avoid the danger, or struggle against it, or fly from it; 'but, in the latter case, it is most probable that he can neither 'see, nor resist, nor escape from the danger. It is no answer to 'say such a person was a trespasser with notice:—that person 'might be unable to read, or a stranger to the neighbourhood, or 'a traveller in the night, or a *woman* or a *child*, or an *idiot* or a '*friend*. The *spring-gun cannot accommodate itself to circumstances*.'

We were the first to expose the folly and iniquity of the Spring-gun Bill of Lord MELBOURNE:—may its repose be eternal!—*Morning Herald, Friday, October* 21, 1831.

Attempt to revive the use of the Guillotine in Paris.

Since the former Revolution, the Criminal Code of France had undergone material alteration. From being one of the most severe in Europe, not even excepting the English law, it became one of the mildest, as far as capital punishments are concerned. By the Code Napoleon, the crimes punishable with death were reduced to the number of six, from a catalogue that equalled, if it did not surpass, the black list of capital offences which disgraces the law, and outrages the civilization of England. Can we wonder the people of France respected more the sacredness of human life after the Revolution of 1830 than after the Revolution of 1789? But they went beyond what could have been expected of them:—they not only shed no blood from the moment that the actual conflict was decided, but they cried out for the ABOLITION of capital punishments; although the fate of the ex-Ministers, whose treason to the State, and obstinate wickedness, had deluged the streets of Paris with blood, then trembled in the scale of Justice.—[See page 67.]

The Government of France joined the people in expressing a decided repugnance to these punishments, and a desire for their abolition, until the lives of the convicted traitors, who were the advisers and the instruments of the

tyranny of Charles X, were placed out of danger. Until then the *guillotine* was allowed to rest; but a wish has been since manifested to sharpen its edge once more for the work of extermination.—What has hitherto prevented the French Government from reviving the examples of blood? A dread —be it spoken to the shame of that Government—a dread of the interposing *humanity* of the people.*

The *Messager des Chambres* lately stated that—

'An execution was to have taken place a short time since at 'the *Place de Greve*. However, in consequence of certain indica- 'tions on the part of the populace, the authorities have thought it 'prudent to defer this exhibition.'

The same paper followed up that statement with the following judicious remark:—

'Since the July Revolution the frightful *guillotine* has not 'made its appearance in Paris. It ought never to be brought for- 'ward here. This abominable punishment cannot, with propriety, 'be used in the midst of a people who behaved with so much mode- 'ration and virtue on the memorable occasion referred to. We 'said, at the time of the trial of the ex-Ministers, that the death 'of those famous criminals would have been a stain upon the glory 'of the three days. The punishment of *death* was *abolished* as 'regarded *them*, and should be equally so with respect to the whole 'community.'

This reasoning cannot be resisted, except by maintaining the doctrine, that the knife of the law should spare great criminals, and only fall upon the necks of inferior offenders. —*Morning Herald, Monday, October* 24, 1831.

Case of the Rioters of Bristol.

The flames which civil tumult had kindled in Bristol were quenched by military execution in blood. The humane officer, who hoped to be able to restore the public peace without turning the edge of the sword against the lives of

* See paragraph from the *Morning Herald* of February 10, 1832.

his countrymen, has fallen by his own hand, the victim to that 'sensibility of honour which felt a stain as a wound'—a stain which the stern spirit of the military code could not forgive, because that code speaks the language of a system organized for the purpose of human destruction: but his error, if it be one, is hallowed in the eye of Mercy. It will do more honour to his memory than the guilty glory of civil slaughter, tarnished by the tears of the widow and the orphan, and pursued by the curses of suffering humanity. He has gone down to the grave without the honours of the soldier, but not without the nobler and more lasting recollections of the virtues of the man; and, indeed, we do not know that even the soldier's fame can be the worse, because his sword was pure of the blood of his fellow-citizens. The rash act which hurried him into the presence of an Omniscient Judge, before whom his accusers must one day appear, would indeed have been a great crime, if it were not the act of a sensitive spirit stung to that degree of madness which precludes the idea of moral responsibility. It is lamentable to think that a generous aversion to take the lives of others, should have placed him in circumstances which drove him to lift his hand against his own.

We admit that Colonel * * * * * was responsible for the execution of such orders as he received from the magistrates; and his great error, in our opinion, was his not insisting upon the magistrates accompanying him to every place where there was danger, that the orders might be executed *in their presence*. But the persons to whom the Government were bound to look *in the first instance*, as those from whom the orders emanated, were the civil authorities.* If, upon a proper legal enquiry, it appeared that they were guiltless of the serious charges of timidity, vacillation, and desertion of duty—if it also appeared that they had given

* It is a matter of public history that the Magistrates of Bristol were, afterwards, tried in the Court of King's Bench, and acquitted.

the proper orders, and, without any default of their's, those orders were not executed, the persons to whom the Government had next to look, was the military officer on whom the execution of the orders devolved; and then the trials of the rioters should have followed, by which arrangement the causes of crime, as well as the amount and extent of crime, would have been investigated by the operation of impartial and comprehensive justice.

But Government began with the lowest class of the accused; and the highest have not been subjected to the ordeal of any legal investigation. *Special Commissions* are of plentiful growth in these days of a 'liberal' Government; but, upon Special Commissions, the *causes* of popular tumult and crime cannot be investigated:—the bare facts of criminality or innocence only can be ascertained; and consequently no such trials can lead to the removal of the causes. They, however, authorize the application of the almost universal remedy of our criminal law—that of *hanging:* a sharp remedy indeed, but which, like all quack medicines, only attacks the symptoms of distemper on the surface of the body politic, and, by driving the malignant humours back upon the vital parts, aggravates the disease.

There are now five wretched men condemned to death, awaiting the execution of their sentence in Bristol. We cannot but admit that their offences are of a very serious nature, though there are circumstances which ought to have weight in mitigating the severity of the law:—crimes of impulse and sudden excitement may be very dangerous in their effects, but are far less malignant in their motives than those of cold, studied, and deliberate intention. If a party had conspired of malice aforethought to burn down Bristol, and *murder the inhabitants*, whose property was doomed to the flames, the law could inflict upon them no more than *death*. It is possible to aggravate even that punishment by *torture;* but even if the law allowed its infliction, public opinion would not tolerate it. This shews that for a crime of such

deep malignity, the simple infliction of death would not be considered too light a punishment; but wide is the difference between such a crime, and that for which the five convicts have been ordered to perish on the scaffold. Their crime was, from all that has transpired, *without premeditation;* and during the whole of the tumults they did not *destroy a single life.*

We are glad to hear from our Bristol Correspondent that a petition, very generally supported, will be forwarded from that city to Government, praying for a commutation of the punishment of those unfortunate men. In the prayer of that petition we heartily and earnestly join. We do not say *enough,* but we say *too much, blood* has been shed already in consequence of the Bristol riots. Many perished in the fires—many have been slaughtered by military execution, and many more maimed for life. The judicial destruction of five more human beings in cold blood will not be of the least advantage to the interests of society;—justice does not demand their lives. We implore the *Kingly Prerogative of Mercy* to interfere, lest the country believe they were immolated on the altars of Revenge.—*Morning Herald, Monday, January* 16, 1832.

Case of the Rioters of Nottingham.

Mr. Justice LITTLEDALE, in pronouncing the extreme sentence of the law upon five of the Nottingham rioters, thought it necessary to justify the infliction of the dreadful doom prepared for the delinquents, by stating the particulars of the offences of which they stood convicted, and then arguing in defence of that principle of criminal jurisprudence, by which the application of the punishment of death is legalized in such cases, and in other instances of violations of the rights of property.

In adverting to the circumstances under which the offences had been committed, the Learned Judge said—

'It appears that, on the 10th of October last, a meeting was 'held in Nottingham upon the subject of Parliamentary Reform. 'After that meeting was over, a number of misguided and deluded 'men, taking advantage of the excitement which but too often fol- 'lows the assemblage of a large number of persons, proceeded to acts 'of outrage and mischief wholly unconnected with the original 'objects of the meeting. In the first place, a large and tumultuous 'assemblage of these persons, consisting of above two thousand 'individuals, proceeded to attack Sharpe's mill, and then went to 'the house of Mr. Musters, at Colwick Hall.'

Here the Learned Judge described the particulars of the outrages, which have been already given in the reports of the trials, and then went on to say—

'The object of the law is *not* to punish criminals for the sake 'of *revenge for the injuries* which they have occasioned, but it is 'that, by the examples which are made, other persons may be 'deterred from violating the law by the commission of crimes; and 'it has been a most painful act on our part to discriminate between 'the various degrees of guilt in which you have been implicated. 'We have made such selection as we thought best, and such as 'would afford proper *examples* to be made for the sake of the pub- 'lic justice of the country, and also such as we think His Majesty 'may, if he should think proper, extend his Royal mercy to, so far 'as to spare their lives.'

The Learned Judge then, having made some further observations to shew the grounds of the distinctions judicially taken in the cases where life was spared, and where it was to be sacrificed, concluded by ordering the five men to whom we have above alluded, to undergo the exterminating decree of the law, and besought them not to delude themselves by entertaining the least hope of mercy.

We know Mr. Justice LITTLEDALE to be as mild, and considerate, and humane a Judge as any that sits upon the Bench. But the habits of a system under which a man is educated, become to him a second nature; and it is very difficult—often impossible—for him to divest himself of the prejudices which early habit and association have taught

him to venerate, as if they were the emanations of pure and exalted reason. Judge LITTLEDALE has been from early life familiar with the principles and practice of a system of justice, which is of so harsh and vindictive a character, that even Sir Robert PEEL, since his own 'amended' code appeared, readily admitted, and that, too, in the debate on his Forgery Bill, that it is still the most sanguinary of any in Europe. Need we then wonder that a man of great natural kindness and humanity, like Mr. Justice LITTLEDALE, should, by the established influence of such a system, have his excellent understanding and benign feelings so warped and altered, that he should calmly talk of the practice of destroying human life, not because the crime was enormous, but because the example would be appalling?—as if the punishment of crime was altogether a question of *political expediency*, and wholly disconnected from all *moral considerations* of the degrees of guilt.

The doctrine proclaimed from the Bench on this occasion, was precisely the doctrine which Judge BULLER announced, when he declared that 'men were hanged, not 'because they stole sheep, but that sheep *may not* be 'stolen.' If this argument of hanging men merely for *example* be good for any thing, we have a right to push it to its full extent:—and what will be the consequence? It is necessary that trivial as well as great offences should be prevented by the most effective examples; and therefore men should be put to death for the *smallest* crimes as well as the *greatest:* for if punishment be independent of *moral* considerations, the simple and compendious law of DRACO should be re-enacted in this civilized age and Christian country, and every offence in the calendar should have but the one word annexed to it, and that word—*Death!*

We do not mean to deny that the offences of which the Nottingham rioters stand convicted, are of a very serious character, and deserving of serious punishment; but there are very severe modes of punishment which do not spill

blood, and which, we venture to say, are more effective examples to society; for the agony of death upon the scaffold is, though terrible, but *momentary;* and constant experience shews that the impression, horrifying as it is for the time, is soon effaced: whereas the living example of the loss of liberty, with hard labour added, and the degradation of a felon's fate, is a constant warning during the whole of the most extended term for which the punishment continues.

It is worthy of observing, that the *guiltiest* of the men whom Mr. Justice LITTLEDALE has left for execution, was *recommended to mercy* by the Jury who convicted him. Will not then the death of that man for whom the Jury themselves felt a sympathy, excite more commiseration than any other feeling?—And when public feeling is *with* the criminal, and *against* the law, how can his punishment operate beneficially as an example?—Still stronger are the grounds for an appeal to mercy in the case of his less guilty fellows.

Let it not be forgotten that the crimes for which the five men condemned at Bristol, and those other five at Nottingham, are sentenced to suffer, were crimes arising out of sudden excitement, and connected with the agitation of a question which disturbed the country from one end to the other.

Judge LITTLEDALE speaks of the criminals as 'misguided and deluded men.' Most assuredly the learned Judge applies the proper epithets to their criminality:—they were misled by those advisers who, professing to support the Government, called the populace into a state of excitement always dangerous, frequently destructive; and, having committed them in acts of violence and outrageous folly, left them to their fate. We who deprecated every appeal to popular passion on the Reform Bill—we who recommended that the struggle should, on the part of the reformers, be one of temperance, and reason, and constitutional power, now come forward to pray for mercy to those 'misguided and deluded men,' whom we cannot be accused of having first

instigated, and then deserted.—*Morning Herald, Tuesday, January* 17, 1832.

The same continued.

Whatever may be the state of opinion with regard to the right, or propriety, of punishing certain crimes with death, we presume there can be but one opinion as to the necessity *of guilt* being *clearly and indisputably proved*, before the dreadful sentence of the law shall in any case be carried into execution. This principle—to which no man, however austere, will, at the present day, refuse his assent—is often fearfully and fatally violated in practice. There is not a year that passes, in which some persons are not executed, of whose guilt great and reasonable doubts are entertained.* This is particularly the case when any species of crime which inspires public terror happens to be prevalent; for then it is difficult to divest Courts of Justice and Juries of that passion and alarm which disturb the clearness of the understanding, and too often make prejudice supply the deficiencies of proof.

The history of Criminal Jurisprudence shews, from the earliest times down to the present day, that the public mind is sometimes in that state which renders accusation almost, if not entirely, tantamount to evidence of guilt. This has been the case, of late years, in the agricultural districts, where the atrocious crime of wilful burning—or, as it is technically called, *arson*—has spread alarm among that class of men who are generally called upon to determine, as Jurors, the guilt or innocence of persons accused of a crime, by which the produce of a year may be reduced to ashes between the setting and the rising of the sun.

The chances of an innocent man being able to clear himself of a dreadful accusation under such circumstances, are considerably decreased when *rewards* are offered for the production of evidence; because such rewards operate as a direct

* *Ante*, p. 99, 112, 145.

temptation to that most malignant sort of perjury which swears away human life for the price of blood. Accordingly, since *arson* became frequent, several doubtful cases of conviction have occurred, and in every one, or in all but one, of those doubtful cases, *execution* has followed, as if the present Government had come to the resolution to take the risk of hanging persons by possibility innocent in cases of arson, rather than advise a reprieve, upon the ground of there being cause to entertain reasonable doubts of guilt. Witness the case of *Dyke*, who was executed at Penenden Heath about a year ago, on slight and most unsatisfactory evidence; and that of *Ewen*, executed at Chelmsford soon afterwards, although there were laid before Lord MELBOURNE documents affording, in our opinion, strong presumptive grounds of innocence: and several have since suffered death upon evidence by no means convincing or conclusive.

Of the five men convicted of rioting and burning at Colwick Hall and Beeston Mills, there are no less than four of whose guilt the proof is exceedingly doubtful. On this subject an intelligent Correspondent of a Morning Paper, who writes from Nottingham, has a passage which we give in his own words. After paying a suitable tribute of praise to the considerate and dispassionate conduct of the learned Judges, he says,

'Still, with all those feelings operating upon me, I cannot help 'wishing that they had not selected so large a number of victims for 'the *vengeance* of the law. If the infliction of terror on the multitude, 'and not mere blind indiscriminating revenge, be the only excuse for the 'sacrifice of human life by the hands of the executioner, which can 'bear a moment's examination, surely much less than the deliberate 'destruction of *five* human beings will answer all the ends of public 'justice. Thank God! it is not for me to say which of these parties 'are more or less guilty; still I cannot hide from myself that there 'are *strong grounds for doubting* even the guilt of some of the parties 'now exposed to the extreme penalty of the law.'

We have not space to go into the particulars of the examination of the evidence in each case; but the result of

that examination is such as to excite considerable doubts of the guilt of the four unfortunate men—*Berkins*, *Shelton*, *Hearson*, and *Beck*. The fifth man, *Armstrong*, pleaded his youth in extenuation of his offence. Yet this is the sacrifice or holocaust about to be made, not to 'august and godlike justice,' but to vindictive law, under the Special Commission at Nottingham—namely, one man so young as to be a fit object for mercy, and four others whose criminality is so doubtful, as to make it a matter of extreme peril whether their execution would not bring upon the Government the fearful responsibility of shedding innocent blood.

We may briefly state,—and we call the attention of the Home Secretary to the subject, hoping that the obstinate error committed in the case of *Richard Lewis*, at Merthyr Tidvil,* will not be repeated,—that *Berkins* was convicted as one of the rioters at Colwick Hall, on the *unsupported* evidence of a witness whose credit was successfully impeached; and not only was the evidence of this witness, in every material point, unsupported, but it was actually contradicted by respectable persons, who, as the Correspondent to whom we have referred states, had better opportunities of knowing the truth; and, indeed, the most material part of his evidence was in itself so highly improbable as scarcely to need contradiction. As to *Shelton*, his identity was sworn to by only *a single witness*, under circumstances on which no positive reliance can be placed—he not pretending to have seen him for more than a moment, through the confusion and smoke of a riot and conflagration, being, as he said, at twenty yards' distance; but, as it has since been ascertained, at more than thirty yards. In the cases of *Hearson* and *Beck*, it is perhaps enough to say, without going into any particulars, that the conviction of both was procured by the evidence of *two accomplices*, which 'was shewn to be so unworthy of credit, that on subsequent

* See *ante*, p. 145.

trials, two Juries *refused to convict upon it.*' If human life be taken on such testimony, the law will be less terrible to guilt, than dangerous to the lives of innocent men.—*Morning Herald, Wednesday, January* 18, 1832.

Cases of the Bristol and Nottingham Rioters continued.

It is impossible for Government not to perceive that public opinion grows continually stronger against punishments of blood. This is not merely the result of the improved influence which the advance of civilization and Christian knowledge exercises in favour of the interests of humanity: it partly arises from the increased and increasing conviction of the *inefficacy* of exterminating laws to repress crime by the terror of examples which do not, and cannot, work any *moral reformation.* But the growing aversion, on the part of the public, to the judicial destruction of life, is a gratifying fact to us, who have laboured long, and sometimes under very adverse circumstances, to diffuse better notions on this important subject than our legislators had endeavoured to teach mankind. It has been our task for some years past to inculcate that *reasonable horror,* which all Christian societies ought to feel, of divesting human life of the sacredness with which the Almighty Creator clothed it, and making that greatest gift of the Father of the universe the cheap and common sacrifice to the angry spirit of revengeful laws;—for it is only in courtesy we can ever give such a system the name of *justice.*

If the public feeling against the infliction of death for crimes against private rights and private property be strong, still stronger is the feeling against the destruction of life for political offences. We are not, therefore, surprised at hearing from our Bristol Correspondent that the petition which was to have been forwarded on Thursday from that City, praying for a commutation of the punishment of the five individuals condemned to the scaffold, had about eight

thousand signatures affixed to it in the short time which had elapsed between the preparation of this appeal to the mercy of the Crown, and the day of its transmission to the Secretary for the Home Department.

If it be denied that the crimes of these five convicts, as well as the crimes of the other five at Nottingham, are, strictly speaking, political offences, inasmuch as, by their agency, supposing them all to have been rightly found guilty, private property was destroyed; yet it cannot be denied that, whatever were the *consequences* of the riots in which they engaged, the *cause* was *political* excitement—excitement arising out of the agitation of the measure of Reform which those Ministers introduced, whose duty it is to advise the Crown in the exercise of its prerogative of mercy. Can the Ministers, with any propriety, refuse to lay before His Majesty the petition from so large a number of the citizens of Bristol, praying for a mitigation of the punishment of men who were led into criminal excesses by the temporary frenzy of a *political crisis*?

What we ask, in the case of these five convicts, and of those awaiting the infliction of a similar sentence at Nottingham (though the guilt of *four* of the latter has been by no means clearly established), is only what we exerted ourselves to obtain for the ex-Ministers of Charles X, convicted, as they were, of the most flagrant acts of *high treason* against the State, of which modern history affords any example. Some of the individuals who are now Ministers of the British Crown, exerted themselves in the same cause; and yet how much greater were the crimes of those men, whose guilty ambition floated the streets of Paris in blood, than the outrages committed by the Bristol rioters—who, though they destroyed much property, did *not sacrifice the life* of any one of their opponents?—Day after day we appealed to the French people to spare the lives of the great and ennobled traitors. The dreadful machinery of the *guillotine* was not put in action, either then, or since, against

political offenders. Will *our* Ministers proclaim to Europe that they have not virtue enough to imitate the example of mercy which revolutionized-Paris afforded to the world?—*Morning Herald, Saturday, January* 21, 1832.

The same continued.

Our opinions upon *Political Unions* arrogating to themselves the functions of Government are well known. There are still Societies in existence with that name; but none that assume the powers, or pretend to the character which can render them, like those combinations which the Government Press most intemperately advocated, and the Government Proclamation *subsequently* denounced, liable to the charge of being dangerous, illegal, and revolutionary.

It matters little what the name of a voluntary Association for political purposes is, so long as its objects are legal, and its exertions to attain those objects are confined within constitutional limits. The 'Birmingham Political Union,' for instance, dissolved itself as to all purposes of illegal organization; but an Association continues to exist under the same name: and as long as it confines itself to the temperate advocacy of political and social improvements and ameliorations, without intruding upon the functions of either the legislative or executive authority, there can be no reasonable, still less can there be any legal, objection to its existence or proceedings. On the contrary, if the principles put forward by such a Society, at any time, be entitled to public attention, on account of justness of view, and force of reasoning, Government ought to attend to them, as the collective opinions of a number of individuals, who unite together to give advice to the ruling power, and do not pretend to be invested with any of the authority of a political body *recognised by the State.* It is in this way we understand the petition of the Birmingham Union, praying the extension of

mercy to the rioters condemned to death under the Special Commission.

The petition is drawn up with temperance, judgment, and ability; its arguments are sensible and cogent, whether as applied to the case of the individuals under sentence of death, or to the system by whose spirit of indiscriminate slaughter they are doomed to suffer.

We have laid down the broad rule for a more just and rational system of Criminal Jurisprudence than we at present possess—that crimes affecting only the rights of property should not incur the forfeiture of life. It is our firm conviction that this rule will be eventually recognised by the law of England; and, as far as the repeated declaration of our own sentiments on the subject can have any influence, we have endeavoured to accelerate the coming of that day when the life of man shall no longer be sacrificed for a sheep, or a horse, or a five-pound note,*—when, in fact, we shall no longer see Justice weighing perishable worldly possessions in one scale, and that human life, upon which immortal destinies depend, in the other!

We know there are many who advocate the abolition of capital punishments on the ground of *expediency*; because they are proved by experience to be less efficient in repressing crime than punishments less revolting to our nature, and that do not shed blood. Some of the abolitionists in parliament rely solely upon expediency. We take up the subject on *principle*. We urge the repeal of capital punishments in relation to all offences affecting only the rights of property; not merely because they are inefficient, but because, being opposed to that morality which was antecedent to all *human* governments, and to the spirit and doctrines of the Christian dispensation, they cannot be inflicted

* It is worthy of remark that, in less than seven months afterward, the writer's view *was realised* as to each of these offences—they had then ceased to be capital. See 2 & 3 William IV, cap. 62 and cap. 123.

without violating *higher* rules of action than the wisdom of human legislatures ever established.

The cases of the victims of the 'reform excitement' are peculiarly distressing ones. These men were carried very unjustifiable lengths by the agitation of the crisis, which excited even cold temperaments, and drove many sober men into passionate extremes. It was no small labour to us to moderate the tone of the Government Press on this question to something like a reasoning propriety.**** Will Government take upon itself to sacrifice the lives of *ten* ignorant men, who, probably, were instigated, not indeed to the specific acts of outrage which they committed, but to general violence, by taking in too literal a sense the inflammatory metaphors of political writers, and reducing their startling figures into fact?

It is melancholy to think that, although the *Reform Bill* is, as yet, very far from being passed, the blood of ten deluded reformers should be offered up upon the altars of legal Vengeance—we will not say as a propitiation to the *enemies of reform*, because they disclaim the sacrifice, but as the *first fruits* of that policy from which the country, only a year ago, anticipated the *unmingled good* of national blessings.

It should be borne in mind that the *guilt* of four of the Nottingham rioters rests upon very doubtful evidence, and the fifth might well plead his youth in extenuation; but, supposing the criminality of the whole of the condemned men, both there and at Bristol, to be quite clear, we ask if blood enough has not been shed already, in consequence of the outrages in which they took a part, and which entirely arose out of the political excitement of the Reform Bill?—There are *other punishments*, severe enough, without taking life—a species of punishment from which, it is well known, *the heart of our humane* KING *revolts.—Morning Herald, Tuesday, January* 24, 1832.

The same continued.

The following paragraph appeared in the *Courier* of last evening:—

'The Secretary for the Home Department has respited one of the 'persons condemned to death for the late riots at Bristol; and it is 'understood that all the recommendations to mercy will meet with the 'most humane consideration. The crime, however, is a grave one; 'and if the punishment of death can be inflicted with propriety in any 'case, it may be allowed to take its course under such circumstances 'as those connected with the outrages in question. But will this awful 'visitation—this retributive justice of man—produce the effect desired? 'Has the example of death-punishment, in similar cases, been produc- 'tive of good? And may not some more efficient and less sanguinary 'mode be adopted? We would not presume, in a question of so much 'moment, to dictate to, or even advise, the Government as to the 'course which it ought to pursue. Strong and praiseworthy as the 'prejudice against the punishment of death is amongst the wise and 'benevolent of all classes, we are not yet sufficiently advanced, 'perhaps, in our knowledge of other means of repression, to dispense 'with this dreadful alternative; and it may be dangerous to plead 'for the offenders, lest it should be supposed that in the horror of 'death there is sympathy for men guilty of arson and robbery, and 'who by chance only are innocent of murder.'*

It is difficult to say whether the above paragraph was written in support of the petitions for mercy, or as an apology for the strict enforcement of sanguinary laws. One part of it seems to recommend clemency; another to shew that lenity, on such an occasion, would be a most dangerous encroachment upon the established system of legalized butchery. *Nil erat unquam sic impar sibi.* Between these conflicting opinions, if the writer of the article in question had a *reasonable doubt* as to which he should prefer, he is bound by the principle recognised in the administration of even the English criminal laws, to throw that doubt into the scale of mercy, and give the benefit of it to the prisoners.

There are some writers who join us in the condemnation

* See *ante*, p. 118, 120, *et seq.*

of bad principles or bad laws, and yet have always a word to say in favour of their application to *particular cases*. Thus, for example, the *Courier* has gone very considerable lengths with us in decrying the criminal laws of England as revengeful and sanguinary, rather than judicially severe; but, somehow or other, there never happens to be an instance of the meditated destruction of human life under those laws, for any offence whatever, that the *Courier* does not seem to consider it right and proper—as if an abominable theory became excellent the moment it was reduced into practice.

We need not wonder at that Journal having a word to say in favour of the execution of the Bristol rioters, when we recollect that it even attempted to defend the deplorable deviation from avowed principles, which a Whig Administration displayed, in strangling on the scaffold of the Old Bailey, last summer, the two petty criminals, *Widgett* and *Broach*, one convicted of sheep-stealing—the other of stealing to the amount of £5 in a dwelling-house*—although under a Tory Government there was a disinclination to hang for the former offence; and although the Statute which makes the latter crime capital, had actually been abolished, as far as a decision of the House of Commons could abolish it, about twenty years before; on which occasion the Whigs zealously supported ROMILLY's Bill of Repeal that, like the *reformed* Forgery Bill, was lost in the House of Lords.

The *Courier* says, 'strong and praiseworthy as the pre-'judice against the punishment of death is amongst the *wise* '*and benevolent* of all classes, we are not sufficiently advanced, '*perhaps*, in our knowledge of other means of repression, to 'dispense with this dreadful alternative.' If this reasoning holds good for any thing, it justifies the judicial destruction

* In justice to the *Courier*, we should observe that, as at present conducted, it seems to entertain more enlightened and humane views of criminal jurisprudence.—ED.

of human life, not because it is moral or just—for the morality or justice of the matter forms no part of the argument —and not because it is wise to do so—for the writer admits that the *wise* of all classes, as well as the benevolent, are opposed to it; but because, 'perhaps,' our legislators are too indolent or careless to take the trouble of devising means for preventing crime, and punishing criminals, which would be less barbarous and more effective than the savage and disgusting work of extermination. In a former part of the article which we quoted above, the *Courier* answers the latter part of its own argument by anticipation; for it says, 'Will this awful visitation—(that is, the application of the '*dreadful alternative*, which it is fearful cannot be dispensed 'with)—this retributive justice of man—produce the effect 'desired? Has the example of death-punishment, in *similar* '*cases*, been productive of good? And may not some more 'efficient and less sanguinary mode be adopted?'—Now the English Judges generally attempt to justify the infliction of death for offences below the degree of murder, on the ground of *example only*; they do not attempt to try it by any *moral* or *religious* test, because they know that the sanguinary doctrine could not abide the test, either of pure Pagan ethics, or of Christian revelation.

The Divine law, which says, 'Thou shalt commit no murder,' does not allow communities of men, any more than individuals, to take life at their pleasure, and therefore does not permit men to be hanged, to save indolent and reckless legislators the *trouble of thinking* about 'some more efficient and less sanguinary mode.' If we want an enlightened Pagan example to condemn our own practice, we may find it in the Roman history. The learned and constitutional BLACKSTONE appeals to that example in the words which we here quote:—'The laws of the Roman Kings and the Twelve 'Tables of the *Decemviri* were full of cruel punishments. 'The Porcian law, which *exempted* all citizens from sentence 'of *death*, silently abrogated them all. *In this period the*

'*Republic flourished.* Under the Emperors severe punish-
'ments were revived, and *then the Empire fell.*' Thus Pagan wisdom and Divine revelation are both opposed to the exterminating system of 'justice,' which disgraces the land where civility, science, and the arts pre-eminently flourish—the land of various learning, of Christianity, and freedom!

But it is not exactly true to say that there are not secondary punishments sufficiently appalling and severe, without bringing upon the land the stain of human blood 'unprofitably shed.' Was there not a secondary punishment made applicable the other day to the case of *May*, the *convicted Burkite*? Who that read or heard the evidence, could doubt the guilt of that man, as to his criminal knowledge of the manner in which the murdered victim came by his death, whose teeth he punched out for sale, while the body was yet fresh and warm? Government found out a *substitute* for the 'dreadful alternative' in his case. Think ye not that the most guilty of the Bristol and Nottingham rioters was less criminal than that man?

Government also found out a substitute for the 'dreadful alternative' in the case of *Hunt*, the confessed associate of *Thurtell* in the murder of the unfortunate Mr. Weare; and so we might give many other instances of the substitution of secondary punishment in the very highest class of crime, where it has been thought proper to relax the severity of the capital law. Have we not in our code solitary imprisonment, transportation for life, the tread-wheel, the hulks, and penitentiaries? Are there not thousands of criminals, in the colonies and at home, who were convicted of crimes capital by the law, and who are now undergoing some one or other of those secondary punishments which are the *substitutes*?

As to the grounds upon which we ask for a mitigation of punishment in the cases of the Bristol and Nottingham rioters, we have explained them fully in former articles on these melancholy cases. We have stated that the guilt of *four* of the Nottingham convicts is not better, if so well, esta-

blished as that of *May*, the *Burkite*;—the fifth has admitted his crime, but pleaded his youth. (*See* p. 208.) All the convicts, both at Bristol and Nottingham, were led, by the sudden impulse of political excitement, into the crimes which they committed. Besides, the great delinquents in the case of the Bristol riots have not been even subjected to any legal enquiry, while *ten* of the ignorant and misguided reform-mob are sentenced to perish on the scaffold. In Bristol, one would think, blood enough had been shed by the swords of the King's troops, to satisfy the most ardent lover of sanguinary retribution;—and is not the sympathy which those convicts excite, a convincing argument for sparing the lives of men whose death can only call forth feelings of commiseration?

Already a second petition has been, it is stated, forwarded from Bristol, signed by six thousand names, in addition to the prior one, signed by about nine thousand. And even persons whose property had suffered from their sudden violence, signed in favour of the culprits. The petition from Liverpool was signed, we understand, by about six thousand —that from Nottingham by upwards of twenty thousand. There have been also petitions from Worcester, from Brighton, from Birmingham, and from the National Union and Operative Classes of London. In short, we recollect no case in which there have been stronger demonstrations of public sympathy for men, who were hurried into crime by the frenzy of political excitement—even Tories and anti-reformers earnestly supplicate for mercy; and although some of the Whig journals are silent on the subject, a portion of the Tory press—the ablest and most intelligent part of it—has joined the country, or at least those whom the *Courier* calls the 'wise and benevolent of all classes,' in earnest entreaties for the lives of the misguided men, to him who sitteth upon the throne, and who is not more bound by his Coronation-oath, than disposed by the suggestions of his humane heart, to 'cause law and justice, in all his judgments,

to be executed *in mercy.*'*—*Morning Herald, Friday, Jan. 27, 1832.*

Continuation of the Case of the Nottingham Rioters.

We are reluctantly induced to advert once more to the painful and revolting subject of the late executions at Nottingham, in consequence of the letter of a Correspondent, who professes himself actuated by the laudable motive of rescuing the administration of justice from the imputation of error, fatal to an innocent man, in the case of the convict *Armstrong*. We respect the motive of our Correspondent; but we think he will find that, in undertaking to rectify a mistake of ours, he falls into a greater one himself.

Having considered the evidence given on the trial at best

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* *Extract from the Correspondence of the Morning Chronicle.*

'PARIS, January 21, 1832.

'The bloody Criminal Code of England, notwithstanding all its 'recent improvements, is a disgrace to the nineteenth century. Let 'us hope that a reformed parliament will begin by reforming the 'laws. Great Britain is called a land of "Bibles, Tracts, and Mis-'sions;" and yet the people assemble in thousands to witness the 'public death of a criminal! First, then, render the population 'humane and civilized before you export Bibles; and labour by night 'and by day to follow up the benevolent and virtuous desires of your 'immortal ROMILLY, who strove to clear the Statute-book from such 'laws of blood.

'Oh! if the people of England did but know one thousandth part 'of what is said and thought throughout civilized Europe of these 'periodical executions in London, and at the country Assizes, I cannot 'but think they would demand the abolition of capital punishments 'with the same unanimity and energy as they now display for a 'Reform of Parliament. On a recent occasion, at a town in France, 'when a man—a criminal—deserving solitary imprisonment for life, 'was ordered to be executed, on the morning of the day all the 'shops and houses were closed, the streets were deserted, and no one 'assisted at the execution but the public executioner and officers of 'justice.'

but doubtful, it is not surprising that the scale should have turned in favour of innocence, when a statement was put forth by a Ministerial Paper, ascribing the conviction of the unfortunate man to jealousy and revenge, and beginning with the following sentence:—'It is a singular *fact* that '*Armstrong* owes his apprehension and his death to the '*revengeful feelings* of a man whose jealousy he had excited.' Such a commencement proves that there was on the writer's mind a pretty strong presumption of the convict's innocence; for what can be more potent in inventive malice than the united passions of jealousy and revenge? The writer then states that *Armstrong* accounted for his absconding from Nottingham by having cause to dread the grasp, not of the King's Attorney-General, but of the parish beadle. He then states his going to Derby, and renewing a former *liaison*, which excited the jealousy of one Owen M'Gauley, the fatal consequences of which he thus describes, and we will give the statement in his own words. Having mentioned that a quarrel took place between the two men, he goes on to say—

'M'Gauley requested another woman to deliver a message for 'him to Mrs. Martin, stating that he had made up his mind *to get* '*rid of* Armstrong, and that when he had done that, he would live 'with her in spite both of Armstrong and of her husband. He was 'as good as his word respecting Armstrong. He gave the infor-'mation that led to Armstrong's apprehension in the first instance, 'and that testimony subsequently on his trial, which rendered his 'condemnation matter of certainty. An attempt was made to get 'Armstrong's sentence changed to a smaller punishment, on the 'ground that M'Gauley was instigated by revenge to swear away 'the life of Armstrong, and that he was not in any respect the 'witness of truth.'

Now we admit it to be possible that the whole of this statement, except as to M'Gauley's having been the chief witness against Armstrong, may be false; but surely the writer for a Government Paper would not have invented it, nor would he have inserted it in his account of the execu-

tion, without believing it to be true; for he gives it to the reader without casting on it himself the shadow of a doubt.

We had said, moreover, when we stated the strong presumption in favour of the innocence of *Armstrong*, that one of the two men executed with him had admitted his guilt, and pleaded his youth in extenuation of his offence. On reverting to the trials, we find that we had conceded too much to the enforcers of the sanguinary law; for it appears that *not one of the men who suffered, confessed his guilt.*

Our Correspondent says, however, that *one* of the men who suffered *did admit his guilt*, and that *that man* was *Armstrong*. We can find no account of his having ever publicly or privately made such an avowal. He did indeed speak of his youth after conviction; but it was natural enough that a man *convicted*, and hopeless of making the Court believe in that sentence after the verdict, which did not avail him on his trial, should endeavour to procure a *mitigation of his sentence*, by the consideration of some circumstance extrinsic to the question of his guilt or innocence. In looking back to the Ministerial Paper, to which we had before referred, we find the reporter says, not that Armstrong confessed the crime, but that he 'all *but admitted* his guilt, when he 'appealed to the merciful consideration of the Court on 'account of his youth.' But such an appeal was quite reconcileable with the fact of his being a perfectly innocent man. Our Correspondent therefore falls into a great error when he says that Armstrong admitted his guilt. He neither did so upon his trial, nor since. If he had admitted his guilt at the time that he made a merciful appeal to the Court on account of his youth, why are we told, in the report of the execution, that an 'attempt was made to get Armstrong's sen-'tence changed to a smaller punishment, on the ground that 'M'Gauley was instigated by revenge to swear away the life 'of Armstrong, and that he was not in any respect the witness 'of truth?' Surely if Armstrong had confessed his guilt when he appealed for mercy to the Court, no person could be so

absurd as to endeavour, in the teeth of his own open avowal of his crime, to obtain a remission of his punishment, on the ground of his being the innocent victim of private malice. As to what our Correspondent says of the age of Armstrong, we can know nothing about it: our reasoning is solely upon the statements that came before the public, which left us to infer that he was very young, from having pleaded his youth in a Court of Justice, without any observation being made that could lead to a contrary inference. If he were, as our Correspondent tells us, the oldest of the three men executed, that renders the denial of mercy to the two others still more harsh and cruel than it appeared to be before;—it being recollected that those two others—namely, *Hearson* and *Beck*—were convicted 'upon the evidence of two accomplices, Dodsley and Slater, which was shewn to be so unworthy of credit on subsequent trials, that two Juries *refused to convict upon it.*'

Our Correspondent speaks of some other persons, accused of the same crimes, having *confessed* that Armstrong was with the party at Beeston Mills. There is great danger in placing any reliance upon private and unauthenticated statements respecting judicial charges, and therefore we never make any account of them; but our Correspondent ought to know that no man can *confess* either the crimes or the sins *of another.* An accomplice may *accuse* another of being a *particeps criminis;* but there is no such thing as *vicarious confession* known to the law of England. If Armstrong had *admitted his own guilt,* where would have been the necessity of any other person, if he could do it, undertaking to *confess for him?*

We originally pleaded for mercy to those men, independently of any consideration of their guilt or innocence. We only alluded to the inconclusive nature of the evidence against them, as an *à fortiori* argument in favour of a relaxation of the extreme severity of the law. Even our Correspondent, anxious as he is to uphold the character of the

administration of justice, says—'I fully agree with you that 'the interests of *public order*, and even of *justice*, would have 'been best consulted, had *none* of the three been *executed*.'

It is that the system and administration of justice may be entitled to public respect and confidence, upon rational and moral grounds, we wish both the theory and practice of the law to be purified from the influence of the vindictive passions, and the stains of vengeance.—*Morning Herald, Monday, February* 6, 1832.

The use of the Guillotine, after an interval of Eighteen Months, is revived in Paris.—Cases of Henry Wells and John Barrett, convicted at the London Old Bailey Sessions, and ordered for Execution by the PRIVY COUNCIL.

From the days of the Revolution of July, 1830, to the 3d of February, 1832, the blood of no Frenchman was shed upon the scaffold in the metropolis of France. During all that time, the apparatus of judicial death, the horrible *guillotine*, which was worked with such tremendous activity at the period of the former Revolution, remained in a state of perfect rest. The great traitors, who had conspired to subvert the liberties of their country, and who commenced the short reign of despotism by military execution upon the citizens of Paris, received the indignant mercy of a people, who did not stain their glorious triumph by making the name of Justice subservient to the passion of Revenge. (*See* p. 74.)

Thus the great criminals being spared as to their lives, and left, in captivity, to meditation and repentance, the French Government thought, very properly, that it would look inconsistent and unequal, to punish with death culprits whose crimes were as inferior to theirs, as their power to inflict evil upon society was comparatively limited. There was also a natural repugnance on the part of the people to see human life taken *in any* case, when even the crimes of the ex-Ministers were thought not to justify it:—therefore the *guillotine* had rest; nor did Justice feel herself defrauded of

her rights, because the axe, which fell not on the necks of illustrious culprits, ceased to drink the blood of vulgar criminals; nor did crime increase in Paris, because the work of judicial extermination was suspended, and the engine of death rusted in its place.

On the part of the French Government, the shew of humanity was only for a purpose; and that purpose being served, an experiment was made, some time ago, to get the *guillotine* at work once more in the *Place-de-Greve*;* but the people, considering the ground of that spot consecrated by the blood of the martyrs of Liberty, gave indications of opposing the execution, and the design was then abandoned. An attempt was afterwards made to carry the sentence of death into effect on the *Place Vauban*, behind the *Hotel des Invalides*; but the protest of the occupants of that establishment was effectual in preventing the infliction of what they considered an ignominy on the neighbourhood, and in some degree on themselves. The third experiment was more successful—the terrible apparatus of exterminating law was finally erected on the *Place de la Barriere St. Jacques*. The axe, cleared from the rust of a long interval of repose, has again drunk human blood; and the Ministry of Louis Philip, whose father perished by a similar machine, have ascertained the *gratifying* fact, that the *guillotine* need not be discarded in Paris, as a necessary part of the machinery of the State.

Upon this subject one of our Paris Correspondents made the other day the following judicious remarks:—

'The renewal of these revolting scenes in Paris is lamented 'and condemned almost unanimously by the public. The penal code 'was considerably ameliorated in the passage through the Chamber 'of Deputies of the law for its revision, and will undergo further 'modifications in the Chamber of Peers, before whom that law is 'about to be brought. A powerful effort will, I am sure, be made 'to abolish the *punishment of death* altogether; which effort, some 'pretend, would have succeeded, but for the alleged necessity of

* *Ante*, page 185.

'making *examples* in cases of *high treason*. The abolition of the 'penalty of death is not likely, therefore, to take place in France 'immediately; but *the day is not distant* when *capital punishment* 'will *cease altogether*. I think I may venture to predict, however, 'that no crimes will in future be punished with death here, except '*murder* and *treason*.'

Now the word *treason* is a very comprehensive word, and Crown lawyers and Judges, under most Governments, have been very much given to the practice of adopting such a latitude, with regard to the construction of that word, as to make it like a drag-net to catch almost all sorts of serious political offences; and even among ourselves, at this day, the offence of counterfeiting a shilling is dignified with the name of high treason by a fiction of law, which considers it an usurpation of the King's prerogative, instead of being what it in reality is—a *fraud* upon the public.*

But, if the French confine their capital punishments, at present, to *murder* and *treason* (though the last great conviction for treason was not followed by death), they will have advanced an almost immeasurable distance before us in the adaptation of their system of Criminal Jurisprudence to the principles of morality, and the demands of civilization.—(See the case of the ex-Ministers, *Ante* p. 74.)

Under our Whig Ministers—men trained in the school of the enlightened ROMILLY—two criminals are ordered for execution on Monday next—one for *cattle-stealing*, and the other for *stealing letters* from the Post-office. Neither in France, nor any country of Europe, nor even in America, would those offenders be punished with the doom which is inflicted upon the murderer. Is *this* an *experiment* also *to bring back* the almost obsolete code, which profusely shed blood for offences against property, into action once more? The public ought to raise their voice against it: they ought not, at least, to fall behind their French neighbours, or their

* As to *Coining*, see Note to the article, intituled '*Remarks on the practice at the Old Bailey Sessions as to passing sentence of death*,' inserted in this volume, next after May 5, 1832.

American brethren, in the enlightened and humane repugnance to the wanton and useless shedding of human blood. We call it useless, as well as immoral and criminal; because there is no punishment *so inefficient* for the *protection of property* as the *destruction of life*, as the whole history of our criminal law proves.

We shall here adopt the sentiments expressed upon this important subject in an Evening Journal, the *English Chronicle*, as follow:—

'In our last publication appeared the Recorder's Report, without comment; 'but it is well worthy of the notice which we feel ourselves compelled to bestow 'upon it. Our readers will have seen from that Report that *thirty-five* persons, 'capitally convicted under our sanguinary laws at the *December* and *January* 'Sessions of the Old Bailey, were reported to the King in Council, and that His 'Majesty was pleased to respite the whole of them during his Royal pleasure, with 'the exception of *John Barrett* and *Henry Wells*, who are left for execution on 'Monday next.

'Now the laws condemned to death those thirty-five persons, every one of 'whose lives might be actually taken on the scaffold, if the King's MINISTERS 'pleased to advise the Sovereign not to interpose the regal attribute of mercy, 'but to "allow the law to take its course." That the lives o the whole thirty-five 'individuals were not taken, is not the fault of the law; for nothing could be more 'legal than the wholesale homicide of all upon whom the Recorder had passed 'sentence of death. But there is something which *the law has not taught man-* 'kind, that *prohibits* what the law *commands*, and prevents the disgusting exhi- 'bition of such promiscuous judicial slaughter. What is this "something" that 'is more authoritative than the tribunals, and stronger than the law? It is the 'power of enlightened Opinion, calling to its aid the morals of the Christian dis- 'pensation, and the instincts of morality.

'But powerful as this enlightened Opinion is, it is not all-powerful, or it would 'not only forbid the wholesale acts of butchery which the law commands, but 'prevent the selection of *particular victims* to perish for offences, for which no- 'thing but a *law of vengeance* could dare to take *human life*. Such are the cases 'of the two unfortunate men who are ordered for execution on Monday next. 'They are the selected victims of a system which never ought to have existed, 'and which our Whig Ministers, when out of office, denounced, as no less opposed 'to the interests of justice than to the dictates of humanity.

'Now we admit that the offences of *cattle-stealing*, and of *stealing letters* from 'the Post-office, are serious and grave offences. Be it so. Are there not serious 'and grave modes of punishment known to our law, which are sufficient for the 'coercion of the offenders, and for the *example* to evil-doers, without taking life? 'Does the shedding of human blood prevent the recurrence of these crimes? 'Not in the least. If the punishment of death were an effective example for the 'repression of crime, surely the practice of *wilful and malicious burning* would 'before this time have been effectually repressed. There is hardly an instance 'where a conviction has been obtained on such a charge, for years past, in which 'execution has not followed. No matter how doubtful the evidence might be on 'which the conviction was obtained—no matter what circumstances of extenuation 'might have existed—the Government have been in every instance (with a rare 'exception or two) inexorable (and none more so than our present Whig Govern-

'ment) to petitions for mercy, on the ground of either alleged innocence or extenuated guilt; yet, in utter contempt of these punishments of blood, the crime of *arson* has increased rather than diminished, affording convincing evidence that the work of human slaughter by judicial process, of which our Statesmen and our Legislators are so fond, works *no moral reformation.*

'We *had* hopes that, as now, and for some time past, the vindictive nature of our criminal code has been universally reprobated; the Government would be glad to relieve themselves from the painful responsibility of advising His Majesty to allow the ferocious law to take its course against any offender whose crime was not at least a violent one, and of the highest degree of malignity and danger; but those hopes have been disappointed:—Christian England alone, of all the nations of Europe, and under a WHIG Government, punishes with death those offences, for which the two culprits are on Monday to suffer upon that scaffold where the *Burkites* so lately expired.'

Morning Herald, Friday, February 10, 1832.

Cases of Wells and Barrett resumed.

It is eminently deserving of public observation, that one of the crimes for which *human life* is ordered to be taken at the scaffold of the Old Bailey on Monday next, is one of the *three specified offences* contained in Mr. EWART'S notice of motion for a repeal of the *punishment of death*, those offences being horse-stealing, stealing in the dwelling-house, and *cattle-stealing.** It is for the last-mentioned offence that *Henry Wells* is doomed, within a brief number of hours from this time, to die by the hands of the executioner.* * * *

Since writing the above, we have received information of a *respite having arrived for Henry Wells*, the *cattle-stealer*; and, if our information be authentic, we presume that the King's advisers† have, upon reconsideration, been convinced

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* It is also deserving of public observation, that for *fourteen preceding years* not an instance occurred of the KING'S MINISTERS advising an execution for *cattle-stealing* in London, upon the Recorder's Report.—ED.

† Lord BROUGHAM was at this time, also, the *Lord Chancellor*, whose office it is, when the Recorder of London makes his report, to assist in advising the extension—or otherwise—of the Royal clemency. (See p. 118.) As to the very merciful inclination of HIS PRESENT MAJESTY, the reader may consult an article taken from the *Morning Herald*, of Tuesday, November 24, 1835, which will be found in our second volume. In the future page of history will be traced this characteristic feature of the reign of WILLIAM THE FOURTH.—ED.

that there are modes of punishment which, whether in the way of *coercion* or *example*, can be as effective in preventing the crime of *cattle-stealing*, as the taking the blood of the offender, if not a great deal more so.* But there is no reasoning which can lead them to this conclusion, which ought not also to convince them that the *stealing of letters* from the Post-office might be as effectually repressed by transportation for life, imprisonment to hard labour, or some other punishment of restraint and example known to our law, as by the barbarous spectacle which the horrid tragedy of the scaffold presents.†

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* It has since been ascertained that the *respite* for *Wells* was procured through the persevering and commendable exertions of the UNDER-SHERIFF, now Alderman, Thomas WOOD.—ED.

† TO THE EDITOR OF THE MORNING HERALD.

'SIR,

'As I observe that you are the unceasing advocate for 'the revision of that part of our Criminal Code, which, without mercy, 'demands the life of man for what may be called light offences (when 'compared with the awful crime of murder), I beg to offer, in addition 'to the many forcible arguments which you, from time to time, have 'adduced, a fact which is of the most convincing and conclusive 'nature.

'The circumstances of the fact are these:—A friend of mine sent 'a *letter* on Wednesday last to a relation in London, containing 'one sovereign; but it was never delivered. On hearing the circum-'stances, I determined on instituting an immediate enquiry. It ap-'pears, however, that the determination was anticipated; and, lest 'it should be put in practice, I had a man dispatched to me, who 'had to walk about eight miles near midnight, bearing a message, 'begging me, in the most pressing manner, not to make any enquiries 'about it, lest the affair might be strictly investigated; in which case, 'if it was traced to the *deliverer*, he would certainly be hanged.

'While, Sir, we admire the humanity which dictates such feel-'ings of mercy, is it possible not to deplore, and cry aloud against 'the effects of laws which tend not to prevent, but *actually to* 'encourage crime?—I say, encourage, Sir; for what but the dread-'ful demands of the law has prevented this enquiry? And what

The principal argument relied upon by Lord BROUGHAM, Sir James MACKINTOSH, and other strenuous opposers of Sir Robert PEEL'S Forgery Bill, in 1830, was the *inefficacy* of the punishment of death as applied to that offence; and they argued, upon *data* which could not be disputed, that the excessive severity of the law, in a great measure, defeated its own object, and, instead of effectually protecting property from that sort of depredation, rendered it insecure. In support of that opinion, they had the recorded sentiments of one thousand bankers—the persons the most interested in the detection and punishment of forgery—besides the numerous petitions of clergymen, magistrates, merchants, members of the profession of the law—in short, the representatives of the commerce, the opulence, the education, and intelligence of the country.

Now, *forgery*, whether in a moral, a social, or commercial point of view, is quite as bad an offence as *stealing letters* from the Post-office. The former is a theft of more ingenuity than the latter, but not the less dangerous. We call it a theft—though, legally speaking, it is a fraud; but the end which the forger has in view is the same with that of the thief, though the means are different. A great many forgers escape without any punishment whatever, because

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'may ultimately be its consequences? Why, the man who pur-
'loined this letter, finding that no enquiries are made, may be
'emboldened by his apparent success, and most probably will repeat
'the offence, until he is so hardened in taking small sums, that he
'will not scruple at taking large, and eventually *his life* may become
'the forfeit.

'It certainly is most evident that the law, as it now stands,
'is inefficient for the prevention of this offence:—hanging, as an
'example, is no preventive. Here is a striking instance—the man
'*Barrett*, just hung—the blood scarcely coagulated in his veins—
'and yet, with this *example* before his eyes, here is a man who dares
'the trial.

'I am, Sir, your's respectfully,

'Hoxton, Feb. 22.' 'E. M.'

people, who feel the penalty of death to be too heavy for the offence, avoid prosecuting, lest they should bring upon their own consciences the guilt of blood:—others, whose guilt admits of no reasonable doubt, are acquitted, because Juries often take that course which is more favourable to life, than remarkable for any strict adherence to the legal deductions of evidence. So it happens, that for one offender in this way who suffers an extreme punishment, many suffer none whatever.

It is so with the offence of stealing letters—the capital law is no protection to the public, but the reverse. An offender is now and then convicted and hanged;* but this offence does not decrease, because many dishonest persons who commit this crime, hope to be as fortunate as others, who have either not been prosecuted, or have escaped conviction upon a trial, contrary to all expectation, in consequence of the natural repugnance of Juries to be instrumental to the vengeance of laws that will have no compensation for wrong but a sacrifice of blood. Rightly was it said by Mr. Fowell BUXTON, in his admirable speech upon the criminal law in the year 1821—

'Whence, I ask, the lethargy, the supineness, the indifference to the *prevention of crime*, which marks our system? Here is the cause:—We *rest our hopes on the hangman;* and in this vain and deceitful confidence in the *ultimate punishment* of crime, forget the very first of our duties—its *prevention*.'

Morning Herald, Saturday, February 11, 1832.

The cause explained of Mr. EWART'S *Bill having been postponed.*

In shewing cause why the Royal mercy should be extended to *Henry Wells*, who was convicted of *cattle-stealing*,

* *Letter-stealing* has since ceased to be capital, (*Vide* 5 & 6 William IV, cap. 81). For this the country is indebted to the spirited exertions of Mr. EWART, who *twice* carried his Bill through the COMMONS—the first time in 1834, when, for reasons which need not at present be made public, it did not pass the LORDS:—*Barrett* was the last who suffered death under the capital law.—ED.–(See Note*, p. 273.)

and left for execution under the last Old Bailey report, our readers will recollect that we alluded to the notice of motion which had been given by Mr. Ewart, in the former session of parliament, and renewed in the present one, for leave to bring in a Bill to abolish the punishment of *death*, in cases of '*horse-stealing*, *cattle-stealing*, and '*stealing* in the *dwelling-house*, no person being put in fear 'therein.' We mentioned that this notice had been several times *postponed* without any sufficient reason having been publicly alleged, to account for a delay which involved the awful question of *human life*.

We have reason to believe that Mr. Ewart postponed his motion so often as he did, not from a deficiency of zeal in the cause which he had undertaken, but from an anxiety that the more extensive question of capital punishments which it involves, might be certain of a deliberate discussion. He was, perhaps, induced to think that, pending the Reform Bill, sufficient attention would not be paid to the subject, important and pressing as it is. We understand that the Bill has long been ready, and that the reason for limiting it to the three offences specified, is, to obviate the chances of the greater obstruction to which a more comprehensive measure might possibly give rise; so much is it apprehended that the English legislature is less capable of taking an enlightened view of Criminal Jurisprudence than the French Chambers—than the Governments of the other civilized nations of Europe—and even than the local legislatures of America, under whose laws none of those offences are punished with death, which Mr. Ewart finds so difficult under a Whig Administration to have erased from the catalogue of capital punishments.

We would recommend Mr. Ewart to amend his notice of motion relative to the offence of *stealing in a dwelling-house*, by leaving out the words 'no person being put in fear therein.' This is too metaphysical a reason to assign for taking the life of man. Let not the fatal criterion be the

fears, real or *imaginary*, of any person, but the *actual violence* of the intruder. This distinction might be a protection to life; but to affix the same punishment to the offence of stealing in the dwelling-house, without the aggravation of any personal violence, as is annexed to the crime of murder, or to the violation of the rights of property, accompanied by atrocious outrage to the person, is to hold out a *temptation to murder:* for in the latter case the punishment can be no more than death; and by murdering the inmates, witnesses are put out of the way, and the chances of detection are of course diminished. Thus do passionate and vindictive laws become, not the support, but the obstruction of justice.—*Morning Herald, Friday, February*, 17, 1832.

Translation from LE TEMPS, *one of the Paris Journals.*

We copy the following paragraph from the French Paper *Le Temps:*—

'ABOLITION OF THE PUNISHMENT OF DEATH.

'The London *Morning Herald* has, in a succession of very striking articles, directed public attention to this important question, and has availed itself of every favourable occasion to get rid of CAPITAL PUNISHMENT from the Criminal Code of England. We have just received a report of two meetings held at Dublin by the HOWARD SOCIETY, in which this humane and salutary innovation upon the English Code had been enforced with zeal and talent. The Society, at its last meeting, voted unanimous thanks to several Frenchmen of distinction, friends to the abolition of capital punishment; and nominated, as honorary Members of the Society, General LAFAYETTE, Messrs. BARTHE, GIROD (de l'Ain), GUIZOT, LUCAS, ODILLON BARROT, DE TRACY, and ISAMBERT.

'The discussion upon this important subject being on the point of commencing before the CHAMBER OF PEERS, we propose to give in a few days some extracts from this publication, (the report of the proceedings of the HOWARD SOCIETY), and of several others, which a Society instituted at LONDON, for the purpose of collecting and diffusing information relative to the punishment of death, has circulated since its formation.'

Morning Herald, Tuesday, March 6, 1832.

Case of John Gibbs, sentenced to death at the Oxford Assizes, for Arson.

Among the cases of conviction for *arson* at the present country Assizes, there is one that has attracted our particular notice, and to which we would also direct the attention of Government, on account of the extreme looseness and insufficiency of the evidence, on which a verdict had been procured, which consigns a fellow-creature, unless the Royal mercy interpose, to a violent and ignominious death.

The case to which we allude is that of *John Gibbs*, described in the report to be a 'very respectable looking labourer,' tried and found guilty at the Oxford Assizes, of setting fire to a wheat-rick belonging to a Mr. Wing, and left for execution, the Judge telling him to entertain no hope of mercy.

We have repeatedly observed upon that indiscriminate application of the one exterminating punishment to various degrees of guilt, which is a disgraceful characteristic of our 'amended' Criminal Code. Under no head of crime is this monstrous confusion more apparent than that of *arson*. Any legislator, whose mind was not strangely possessed with the one sanguinary notion of the virtue of the *hanging system*, would have seen and *marked* the distinction between cases of arson which destroyed or necessarily endangered human life, and those which could only cause the peril or loss of property. If such a legislator thought it right to punish with death the midnight incendiary, who sets fire to a house in which there is a sleeping family, he would not confound a minor offence with so horrible a crime, by subjecting to the same punishment the offender who burns a barn unconnected with any human dwelling, or a rick of corn, or a stack of straw, in a field or other place, where life is not put in peril. The latter are bad offences, we grant; but they are far from being either so malignant, or so dangerous, as the setting fire to a dwelling-house, with the intent of consuming its

inmates. As reason and morality make distinctions in the *guilt*, so would a reasonable and moral system of justice make distinctions in the *punishment*.

At present, however, our object is not so much to deal with the law of arson, as to observe upon the facts of the particular case to which we have adverted. It appears, then, that suspicion first fell upon *Gibbs*; by his being seen to 'work carelessly' at the engine employed to extinguish the flames—that his shoes fitted some foot-prints in a field leading from the turnpike-road towards the place where the rick stood—that a witness met the prisoner coming as in a direction from the fire after the alarm was given; and that both having then proceeded towards the fire, the prisoner lagged somewhat behind, and was not there as soon as witness—that a flint and steel were found in a close, near a place where, it was said, the prisoner stopped for a time in going towards the fire—that, when somebody asked him where he had been on the night of the fire, he said he had been at his father's, but afterwards said he had been at Barton, which is about two or three miles from where the fire happened—that he said to another person, he thought there was time for any one to get to Barton before the fire was seen—that upon an old woman saying, 'I wish those who set the stack on fire 'were in the middle, burning in it,' the prisoner observed, 'It will never be found out;'—that, on the constable telling the prisoner he would have plenty of time to get up his witnesses to the Assizes, he answered, 'It's of no use get-'ting any one to come there; they will try me, and will 'hang me.'

Now all this, we allow, makes out a case of suspicion, but is far from affording conclusive proof of guilt. If the offence be rightly punishable with death, it is, at all events, necessary that his guilt should be brought home to the prisoner beyond the possibility of a doubt; but the whole of this evidence may be true, and the prisoner guiltless of the charge. As to the steel, on which great stress was laid, the

witness, who was called on the part of the prosecution to trace it to the prisoner, failed to prove any such thing. She could only say that she saw a steel *like* it in the house of the prisoner's father seven or eight years before, but never saw such a one in his possession. As to the fitting of the shoes, it is at best a fallacious test; because the village shoemaker is often known to make shoes for a whole district of labourers on the same *last*, and nail them all after the one pattern; and it often happens that the very attempt to fit the shoes to foot-prints makes a secondary impression, which is mistaken for the original one; but in this particular case a witness for the prisoner accounted for the foot-steps by deposing, that, some time before the prisoner was taken into custody, he had walked with him across the field in question towards the stacks, to take shelter from a shower. The person at whose house the prisoner lodged, stated that he had seen the prisoner with a flint and steel, but never with the steel in question; and that the prisoner's steel, flint, and box were then at his house. As to the prisoner's saying 'it was no use to get any one to come to the Assizes for him, 'and that they would try him, and hang him,' it only proves that an impression has taken hold of the minds of persons in humble stations of life, like the prisoner, that *to be accused* of the crime of *arson* is tantamount to a *conviction*. Such an impression is not likely to be removed by executing men, as some have been already executed, on slender and dubious evidence of guilt.

Believing the Jury to have acted with perfect purity of intention, we consider them to have fallen into the great and dangerous error of mistaking *suspicious circumstances*, for—conclusive *proofs of criminality*. An Old Bailey Jury would never have been satisfied with such evidence as was given in this case. Their superior intelligence—their habit of closely sifting the evidence for themselves—would prevent them coming to a conclusion which negatived all doubt, from premises replete with doubt.

But the Executive Government have the power of redressing the otherwise fatal errors resulting from excitement, or ignorance, or fallibility of judgment, on the part of Jurors. In the present case we do not find that a circumstance, which used to be considered indispensable to a conviction in charges of this nature, where the evidence was merely circumstantial, was proved, or attempted to be proved. There was no evidence of *malice* on the part of the prisoner towards the prosecutor—no threat of hostility or revenge, which would have shewn malice *expressly*—no proof of any quarrel between the parties, from which malice might be *inferred*. The circumstances of suspicion are, consequently, not strengthened or explained by any evidence of a *motive* to the crime.

If Government are resolved on punishing every case of arson with *death*, notwithstanding the experience of the *inefficacy* of *that* punishment to repress the crime, it should at least be clearly shewn that the sanguinary law has got hold of *the right* person. Within the last year or two we have reason to be convinced that the rage for making examples for this offence led, in some instances which we could name, to the destruction of innocent life. In proportion as the passions grow strong, the judgment becomes enfeebled. Hence, through an excessive zeal to punish crime, we may be induced to commit a more dreadful wrong than the crime we punish.—*Morning Herald, Wednesday, March 7*, 1832.

Necessity of great circumspection on the part of Juries in cases of Arson.

The danger to which the lives of poor persons, more especially of farming labourers, are exposed in the rural districts, where the crime of *arson* prevails, by false and malicious charges of that nature, cannot be too strongly impressed upon the public mind. Such is the rage for conviction, that the most innocent man in humble life, who is once accused,

may consider himself exceedingly fortunate if his innocence avail him upon trial.

In the days when the laws against *witchcraft* prevailed in this country, the sacrifices of human life that were judicially made, upon the accusation of an offence which had no existence but in the imagination, was not the fatal consequence of the ignorance and credulity of Juries alone;—the ermined dispensers of justice, whose education and habits of reflection ought to have taught them better, lent themselves to the vulgar prejudice, encouraged the outrageous persecutions of the wretched and helpless objects of the popular fury, and desecrated the altars of Justice, by offering upon them the victims of a benighted and cruel superstition.*

One of the most extraordinary circumstances connected with the trials for witchcraft was, that many of the miserable objects of superstitious ignorance were induced, by the excitement of the times, to confess their participation in a crime which never existed, and to describe even the particulars of that appalling intercourse with demons, which all enlightened persons now admit could never have existed, but in the distempered minds of the weakest and most infatuated of human beings.

But the crime of *arson* is not, like that of *witchcraft*, an imaginary crime; yet we may learn a lesson of caution from what occurred in the prosecution of persons charged with the latter offence. Many suffered, even under Judges of high authority in the English law, the penalty of *death* for a crime which, it is now admitted, could have *no existence*,

* In 1664, two women of Lowestoff, both widows, Amy Duny and Rose Callender, were tried and condemned for *witchcraft* at Bury St. Edmunds, by Sir Matthew HALE, then Lord Chief Baron, who 'gave the law its course.' They died declaring their innocence.—Judge POWEL, at Huntingdon, condemned for the same crime *(witchcraft)* Mary Hickes, and her daughter Elizabeth, an infant of eleven years old, who were executed on Saturday, July 17, 1716.—Many others, convicted of *witchcraft*, suffered death.—*Characters of Charles James Fox, by 'Philopatris Varvicensis,' (Dr. Parr.)*

and, consequently, the evidence to substantiate which, must have been *wholly false*. This surely ought to teach Judges as well as Juries to be very careful how they allow their sober reason to be influenced by an indignant feeling, and decide the awful question which affects the life of man, not by the calm force of dispassionate conviction, but by the eager and unreflecting impulse of excitement.

The length to which the effect of mere suspicion has been carried, with regard to the crime of *arson*, may be, in some degree, understood by the circumstance that there were no less than *four* commitments for this crime in the calendar of the Cambridge Assizes, in *every case* of which an intelligent and considerate Grand Jury found it their duty to *throw out the Bill*. In two of these cases the individuals, against whom this charge had been brought, for which there was not a shadow of proof, had been in custody *five months!* In another case the term of imprisonment was one month, and in the fourth instance, four months. What a state things have come to, in this once great and flourishing country, that British subjects can be for such long periods deprived of their liberty, and treated as felons, although the charge against them is so groundless, that a Grand Jury cannot even find a bill! Yet, if these four men, or any of them, had been convicted upon evidence ever so slight, we have reason to think, from what we have seen, that they would have been *executed.—Morning Herald, Friday, March* 16, 1832.

The same subject continued.

We have already alluded to the extraordinary circumstance of four cases of *arson*, all that were contained in the calendar of the Cambridge Assizes, having been disposed of without putting the prisoners on their trial, by the Grand Jury, who *threw out all the Bills*. We should mention that the Judge (Mr. Baron GURNEY), in his charge to the Grand

Inquest, told them that 'they ought not to find bills unless 'it was pretty clear that such facts could be proved as would 'convict the parties.' Our readers are aware that, in the preliminary investigation of a Grand Jury, evidence is heard only on the side of the prosecution—the prisoner has no opportunity of being heard, either personally or by witnesses —the question being only whether there is a *primâ facie* case which he ought to be called upon to answer at the bar of a Criminal Court. It is therefore evident that in none of the cases of arson contained in the Cambridge calendar, was there even a *primâ facie* case against the humble individuals who were, upon the charge of an atrocious crime, dragged from their homes, deprived of their liberty, and taken from their daily labour, to breathe the moral contagion of a gaol, which but too frequently inflicts an incurable taint upon the innocent mind, and prepares him to become a criminal whom the law pronounces guiltless.

We pronounce no opinion upon the conduct of the committing magistrates in these cases, and in that of a capital charge—of violence to the person of the prosecutrix, in which the bill of indictment was also *ignored*. No doubt the magistrates acted conscientiously. We should suppose they thought it their duty to commit in every case of even the slightest suspicion where the crime charged was of a heinous nature. If so, they acted upon a mistaken sense of duty; for, the more heinous the offence charged is, the more necessary it is that a jealous scrutiny should be exercised, lest, without cause, the character and liberty of a fellow-subject may be taken away—his life exposed to all the chances which bring innocence into jeopardy when public alarm exists as to any prevailing crime, and his morals exposed to the contamination of a gaol, where two of the prisoners, to whose cases we have alluded, were in the situation of untried felons for the space of five months! Ought not those poor men, and others similarly circumstanced, to be considered entitled to some *public compensation*?

It is not improbable, that, if the Grand Jurors had found the Bills in all the cases of *arson*, some of the prisoners might have been convicted by a Petty Jury, if it happened to consist of a certain description of farmers, such as have returned verdicts of guilty in certain other cases, upon evidence so slight, that it seemed as if they thought it their duty to convict under any circumstances, where *the charge* was that of burning farming produce.

The system of offering *rewards* has led very much to the sacrifice of innocent life. It is an outrageous anomaly in our law, that, in a case of *property*, a person who has the least *pecuniary interest* in the result of the trial, is disqualified from becoming a witness; while, in cases where the *life of man* is at stake, persons who are promised a price for the blood of the accused, are not only allowed, but *invited* to give evidence against him! How can the current of justice run pure, if witnesses have *an interest* in perjury?—*Morning Herald, Saturday, March* 17, 1832.

Case of Priscilla Woodford, sentenced to death at the Lincoln Assizes, for Arson.

The case of *Priscilla Woodford*, convicted of *arson* at the Lincoln Assizes, has nothing in it of peculiar atrocity—nothing to justify the infliction of the extreme penalty of the law, even if she were of mature age, instead of being but a girl of sixteen years. Had she set fire to her master's dwelling, it would have shewn a degree of malignity very difficult to be separated from that malice aforethought which premeditates the destruction of human life; but her offence, though deserving of severe punishment, was very different from that crime, and of a much lower grade in guilt. Besides, her confession was of a sort which manifested a simplicity of character very unlike what one expects from a hardened offender. Yet she has been awarded the same punishment as if she had been an old and inveterate offender, and as if,

instead of setting fire to a haystack, she had burnt down her master's house while the family were in their beds.

Our legislators having, with equal cruelty and impolicy, chosen to make laws which denounce the *one* punishment of *death* against offences of *various degrees* of danger and guilt, our Judges do not hesitate to sacrifice human life without any reference to *moral principle*, and solely upon the ground of what is called *expediency*. This they admit themselves, by saying that offenders are hanged, not because they deserve death, but by way of *example*. But this argument in favour of capital punishment proves too much; for, if it be good for any thing, it proves that human life ought to be taken for the smallest as well as the greatest crimes. If death be the most efficacious punishment in the way of *example*, and if no attention be paid to the moral degrees of guilt, the doctrine of Draco ought to be revived:—a perfect unity of character ought to pervade our criminal code, and *death alone* should be the punishment for every offence, from a malicious trespass, to a deliberate murder.

We understand that the chief reason which Mr. Justice James PARKE had for sentencing this girl to death, without hope of mercy, was, that four or five fires had happened in the neighbourhood; so that, if she be hanged, it will be for something *extrinsic* to the crime which she committed. She is to be hanged, not because there is any thing peculiarly atrocious in the crime of which she has been convicted, but because *others* have, before she was tempted to offend, committed in the same neighbourhood *worse crimes of arson*. This is, in fact, nothing else than a sort of *vicarious* punishment—it is the putting one offender to death for the crimes of others. Yet he is one of the ablest Judges on the Bench;* —but what mind can escape the influence of a system which

* The Learned Judge who tried *Priscilla Woodford*, subsequently made such a report upon her case, as induced the Crown to extend its mercy to her. We may take at the same time the opportunity of saying, that, among the King's Judges, there is not one who tries a capital

is so familiar with blood? We had long ago contended that capital convicts ought to have the benefit of a Court of *Criminal Revision*, upon merely claiming a right of appeal. (*Ante*, p. 149.) The conduct of Lord MELBOURNE, since he has been in office, makes us think such a Court more necessary than ever:—but of this again.—*Morning Herald, Thursday, March* 22, 1832.

Case of Simon Frost, sentenced to death at the Assizes, Bury St. Edmunds, for Highway Robbery.

The apologists of the indiscriminate severity of our criminal laws take their stand upon the ground of what they call *public policy*, being well aware that those laws are wholly *independent of moral principle*, and therefore cannot be defended, but by denying that the degrees of guilt ought not to be taken into account by the legislature in apportioning the punishment of crime. It is, indeed, a convenient doctrine for our Draconic law-makers, which declares the judicial shedding of human blood to be a matter of mere *expediency*, and thereby relieves them from the trouble of graduating the scale of punishment according to moral distinctions,—silencing the unpleasant admonitions of *conscience*, as an intrusive intermeddler in the work of criminal jurisprudence.*

But if death is to be inflicted upon criminals on grounds of public policy, let us at least see in each instance that it is policy which demands the sacrifice, and not merely judicial temper or caprice. It is not too much to require that, as long as the punishment of death is justified on the ground

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case with more patient discernment, and more humane precaution, than Mr. Justice, now Baron PARKE, or whose personal virtues reflect more lustre upon the judicial ermine.—ED.

* PALEY, the defender of the punishment of death on the ground of its supposed *expediency*, once said, '*he* could not afford to keep a conscience.'—ED.—(See *ante*, p. 21.)

of expediency, it shall be clearly shewn that each example of blood is for the public good, in the sense in which our Courts of Justice use the term—or is, in other words, expedient.

There is now an instance of a young man lying under sentence of death at Bury St. Edmunds for highway robbery, the *expediency* of whose execution we greatly question; and we think we can shew, from the peculiar circumstances of the case, that more mischief than good must result to society from carrying the sentence into effect.

The person to whom we allude is *Simon Frost*, who is twenty years of age, and was convicted of robbing a man of some sovereigns, under circumstances which Mr. Baron VAUGHAN, who tried the case, considered to justify the infliction of the extreme penalty of the law; and, accordingly, he left him for execution, without hope of mercy.

The facts of the case are before the public. We shall confine ourselves to stating what is of most importance, as bearing on the question of *policy*; for we presume, that, in a *moral* point of view, there can be no pretence for confounding, in the one sanguinary retribution, the man who, in unlawfully possessing himself of property, *spares* life, and the man who *destroys* it.

Perhaps, upon a little calm reflection, an English Judge, however strong his predilections may be in favour of the system under which he has been educated, would see that public policy is no less opposed to the infliction of death, in such a case, than reason and moral feeling. In the particular instance to which we allude, the prosecutor was in the power of his assailant, helpless on the ground. It was as easy for him to have destroyed his life, as to have desisted from taking it. He had given the prosecutor—who was in liquor, and had been foolishly displaying his money in a beer-shop—three or four severe blows of a stick, though he did not give him the first blow, which was inflicted by another hand, and knocked him down. It was in evidence

that the prisoner, after having struck three or four blows with the stick, called out to his companion, a lad of fourteen, 'Shall I murder him?' and the other answered, 'For God's sake, don't!' and he did not. He robbed him; and the man, from the effects of the blows given him in his drunkenness, was confined ten days to his bed; and the prisoner *might* have *murdered* him, if a better feeling, assisted by the remonstrance of his companion, had not prevailed, and saved the life of one—upon whose evidence—his own is now to be taken. It may be that the prisoner, when he said, 'Shall I murder him?' only meant to frighten him; for the prosecutor was not so stunned by the blows, but he could swear to the very words of the prisoner. But, however this may be, we ask, if this man *be executed*, may it not cost other persons, under similar circumstances with the prosecutor, *their lives*?—it being seen that to controul the brutal passion, and to spare life, is no ground for the *mitigation* of punishment; while to kill, *removes the witness* out of the way. Is that—*public policy*, which takes such a mode of punishing *robbery* as must encourage *murder*?—*Morning Herald, Saturday, March* 24, 1832.

The case of Simon Frost continued.—His Respite.

A few days ago we made some observations, as our readers will recollect, on the case of *Simon Frost*, who was convicted of highway robbery before Mr. Baron VAUGHAN, and left for execution, without hope of mercy. We endeavoured to shew that, although some personal violence had been committed, it was not a case that could justify the infliction of the extreme sentence of the law. We argued the subject merely on the ground of *public policy;* because that seems to be the only principle which Legislators and Judges rely upon, in defending the sanguinary character of English criminal law. It surely would not have been politic to have subjected to the same doom as the murderer, the man who, when he

had the prosecutor at his mercy, helpless upon the ground, and, after striking him two or three times with a stick which he had wrested from him, allowed the remonstrance of an associate to stay his uplifted hand, reined in his fierce passion, and spared the life of him who, with the exception of his accomplice, was the only witness of his crime. It appeared to us that to execute a man, under such circumstances, would be to cause other lives to be sacrificed by robbers, who would see, from the fate of the convict in this instance, that to *add murder to highway robbery* could not increase the punishment, while it would greatly tend to *promote the chance of impunity*, by silencing the witness for ever.

Entertaining this view of the case, it is with great satisfaction we find that the Learned Judge who left the prisoner for execution, has revised his judgment, and granted a *respite*, with a view to a commutation of punishment. We also learn, it turned out, upon enquiry, that the offender had borne a good character up to the time of committing the act which was so near being expiated on the scaffold. He was an agricultural labourer, who, while drinking in one of those dens of rustic dissipation—a beer-shop—was first tempted into crime by the prosecutor, who was in a state of intoxication, displaying a quantity of sovereigns, as if inviting any one whom drink had made reckless, to possess himself of a treasure, which the owner had neither the sense to conceal, nor the strength to guard.

It may be asked how it happened that the prisoner produced no witness to character on his trial? The answer to this question will apply to many cases where *poor* and *ignorant* men are the accused parties. From their ignorance they are not aware of the value of character in mitigating punishment, even where it cannot throw a doubt upon the proof of guilt; and their poverty prevents them from being able to secure the attendance of witnesses, if they live at any distance; for, there are few but relatives who will travel

many miles from their farming concerns, or daily labour, to give a character to a prisoner who cannot pay their expences.*

In the present instance, the prisoner lived in a parish, in which there is neither a resident magistrate, country gentleman, nor even a clergyman. There was nobody, therefore, who knew the prisoner, and was in that station in life which could lead him to communicate to the Judge, previously to passing sentence, that the character of the prisoner had been

* 'The particular improvement of allowing Counsel to those who 'are accused of felony, is so far from being unnecessary, from any 'extraordinary indulgence shewn to English prisoners, that we really 'cannot help suspecting, that *not a year elapses in which many inno-* 'cent persons are not found guilty. How is it possible, indeed, that it 'can be otherwise? There are seventy or eighty persons to be tried for 'various offences at the Assizes, who have lain in prison for some 'months; and fifty of whom, perhaps, are of the lowest order of the 'people, without friends in any better condition than themselves, and 'without one single penny to employ in their defence. How are they 'to obtain witnesses? No attorney can be employed—no *subpœna* 'can be taken out; the witnesses are fifty miles off, perhaps—totally 'uninstructed—living from hand to mouth—utterly unable to give up 'their daily occupation to pay for their journey, or for their support 'when arrived at the town of trial—and, if they could get there, not 'knowing where to go, or what to do. It is impossible but that a 'human being, in such an helpless situation, must be found guilty; 'for, as he cannot give evidence for himself, and has not a penny to 'fetch those who can give it for him, any story told against him must 'be taken for true (however false), since it is impossible for the poor 'wretch to contradict it. A brother or sister may come, and support 'every suffering and privation themselves in coming: but the prisoner 'cannot often have such claims upon the persons who have witnessed the 'transaction, nor any other claims, but those which an unjustly accused 'person has, upon those whose testimony can exculpate him—and who 'probably must starve themselves and their families to do it. It is 'true, a case of life and death will rouse the poorest persons, every 'now and then, to extraordinary exertions; and they may tramp through 'mud and dirt to the assize town to save a life—though even this 'effort is precarious enough.'—*Edinburgh Review, December* 1826, Vol. xlv, p. 76.

heretofore free from reproach; and he had neither Attorney nor Counsel. We must do Mr. Baron VAUGHAN the justice to state, that he subsequently made enquiries relative to the man, the result of which, no doubt, co-operated with the suggestions of calmer reflection to induce him to spare the life of the culprit, who had himself, in the midst of violence, stayed his hand, and respected the sacredness of life.—*Morning Herald, Thursday, March* 29, 1832.

Baron GURNEY'S *Charge to the Grand Jury of Norfolk.*

In the charge of Mr. Baron GURNEY to the Grand Jury of the County of Norfolk, some observations were made relative to the great increase of crime, which are deserving of public attention. The Learned Judge did not, like many others, in remarking upon the heavy state of the calendar, express an implicit reliance upon the efficacy of severe laws in restoring the lost morality of the people. He, impliedly, admitted that something else is necessary for the repression of crime than the terrors of penal justice, by ascribing to the wretched underpaid condition of the labourer, the increased quantity of crime. If that be a cause (as there can be no doubt it is a fertile cause,) of the demoralization of the lower classes, it is vain to hope, by excessive severity of punishment, to remedy the evil. The effect cannot be removed by something which does not touch the cause. As long as the *policy* of a country is of a demoralizing character, its *laws*, be they ever so vindictive in spirit, and harshly executed, cannot be efficient in putting down crime; for mere examples of terror produce no moral reformation.

Mr. Baron GURNEY, in alluding to the education of the poor, rightly observed, that 'instruction must be unavailing 'unless accompanied by labour; and, if employment be given 'to the poor, the most important matter is, that sufficient 'remuneration should be given.' He added, 'We are told 'that the labourer is worthy of his hire, and unquestionably,

'if he does not receive a sufficient remuneration for his toil, 'he becomes discontented, dissatisfied, and impatient of his 'condition; and to such a state of things I have no doubt may 'be attributed the great increase of crime.' Nothing can be more just and correct than those observations; nothing more worthy the judgment-seat than the expression of such sentiments to the collected gentry of the county, on whose conduct the happiness or misery of the labouring classes so mainly depends.

We could wish his Lordship had pointed out to the landlords who heard him, one simple and obvious mode of alleviating the condition of the labouring poor, by letting them have *small allotments of land.* The having a little land to cultivate for his own advantage, is one way of withdrawing the poor man from that state of idleness which is the parent of crime. It is also one way of rescuing him from the degrading necessity of applying to the parish for relief, as it can afford him subsistence when out of regular employment. But, until the State does its duty to the poor, it has no right to be cruel and intemperate in punishing the crimes which its own policy unavoidably tends to produce.—*Morn. Herald, Friday, March* 30, 1832.

Case of Robert Folkes for an alleged offence, for which he was sentenced to death at the Ely Assizes, and left for execution; but afterwards proved, by the exertions of his Counsel, to be INNOCENT.

Robert Folkes was tried, along with *Levy Ladds*, at the late Assizes for the Isle of Ely, held at Wisbeach, before the Chief Justice of Ely, (Serjeant STORKS,) for an offence against the person of Elizabeth, the wife of John Haythorp, committed under aggravated circumstances; and certainly, if any offence besides murder ought to be punished with *death*, it is the offence for which the prisoner was committed. It is, therefore, not at all surprising that on his conviction the Chief Justice pronounced sentence of death, and left him for execution, without the least hope of mercy.

It is necessary, however, that indignation against a particular crime does not induce those to whom is committed the important trust of administering penal justice, to be too precipitate in its punishment. This is sometimes the cause of irreparable errors, by consigning a human being to an ignominious doom before there has been such a thorough investigation of the circumstances of the case, where doubtful points arise, as may satisfy calm, dispassionate Justice that the decision, affecting the temporal, and, perhaps, eternal fate of a fellow-creature, is not the rash and intemperate deduction of passion, but the deliberate conclusion of exact and impartial reason.

If there were not points of doubt connected with the case of *Robert Folkes*, which would make it unsafe to execute him without further investigation, we should not have thought it necessary to call the special notice of Government to his case. We shall state as concisely as possible what these points are; and we think they are such as must induce the Secretary for the Home Department to institute a further enquiry, to ascertain the guilt or innocence of the unhappy man; unless he considers the life of a fellow-creature of much less value than it ought to be estimated at, by any one who is worthy of filling the important and responsible office intrusted to his charge.

It is particularly deserving of being noticed in this case, that the prosecutrix swore positively to the identity of *both Folkes* and *Ladds*. Not only was her direct testimony positive and decided, but it could not be shaken upon cross-examination. She was, of course, from the nature of the offence, the only witness to the identity; but, notwithstanding her positive swearing, *Ladds* was enabled to produce six respectable witnesses, who satisfactorily accounted for his presence *elsewhere* during the whole of the day and night in which the offence was alleged to have been committed. In technical language, he proved an *alibi*, which the Jury believed, and acquitted him, and by acquitting him, shewed that they *disbelieved* the positive evidence of the *prosecutrix* as to his identity. This fact alone ought to make a Judge, or a Secretary of State, careful how he allows the dreadful sentence of the law to be carried into execution without further enquiry.

It has been justly observed by Judge HALE, that a charge of this description is 'easily made, and difficult to be disproved.' It generally rests upon the solitary oath of the prosecutrix. It has

often been made through a feeling of revenge, or to extort money. It is a charge that, when preferred against any man, however unsullied his innocence, or high his station, he might find it not very easy to repel: but how difficult must it be for the poor and friendless man to establish his innocence, if the prosecutrix will swear positively to his guilt!—A poor prisoner, if the scene of the alleged offence is at any distance from the place of trial, is seldom able to procure witnesses, from his inability to pay their expences; and hence it has happened that, under our exterminating laws, many a man has suffered, not for his crime, but his poverty.*

Another important fact, calculated to excite doubt, is this. The prosecutrix swore that she told the whole of what had happened to a woman, who was called on behalf of the *prosecution*—but who, when placed in the witness-box, as positively swore, that, although the prosecutrix had been two hours in her house that morning, she *never mentioned a word of the matter* to her. The prosecutrix also swore, that, on the night but one before the offence, she and her husband, and another man, a friend of theirs, slept in a hayloft; and it was proved by the man who let them into the loft on the night in question, that the woman and *three* men slept there. Again, the husband swore that he never offered to make up the charge for a few shillings; whereas a respectable farmer was called for the defence, who swore that on the day after the offence was said to have been committed, he had a conversation with the husband, who said he was willing to settle it for a few shillings; but, if they (the prisoners) would not 'come up,' he would look for compensation elsewhere.

Upon these facts, altogether independent of any point of law which may have been taken by the prisoner's Counsel, we notice the case of *Robert Folkes* as one, at least, of sufficient doubt to justify a *stay of execution*, to give time for further enquiry. It appears to us curiously inconsistent, that the Jury should *wholly disbelieve* the prosecutrix as to the identity of one of the prisoners, and *not doubt* her evidence as to the other.—*Michael Dillon* was

* This case, we learn, was brought under the notice of the writer in the *Herald*, by LEWIS FLANAGAN, Esq., Counsel for the prisoner, whose zealous and indefatigable exertions to save the *convict's* life, subsequently as well as during the trial, were dictated by a strong impression of his innocence, which the result verified. (See the articles which we have inserted.)—ED.

The reader's attention is particularly requested to the valuable remarks from the *Edinburgh Review*, inserted at page 233.—ED.

rescued from death for a similar offence:—he was in the rank of a gentleman. Shall the life of a poor man be of less account?—*Morning Herald, Friday, April* 13, 1832.

The Case of Robert Folkes continued.

A Correspondent, of whom we have no personal knowledge, and who signs himself 'A Friend of impartial Justice,' has addressed a communication to us, which he was induced to write by reading the statement which we made on Friday, of the circumstances under which *Robert Folkes* has been left for execution by the Chief Justice of Ely. Our readers will recollect that *Folkes* was convicted of a capital offence against the person of Elizabeth Haythorpe, and that the most remarkable circumstance connected with his case was, the singular fact of the Jury having found the prisoner guilty upon evidence which, in regard to another person accused of the same offence, they wholly discredited. The convict, and a man named *Levy Ladds*, were tried together for this offence; and the woman swore positively to *both*, and not with more positiveness to one than the other. *Ladds* was able to call witnesses to rebut her testimony, whom the Jury believed, and acquitted him. By doing so, the Jury gave the strongest proof of their own opinion that the woman had either sworn falsely, or under a mistake scarcely less culpable than a crime—against the life of *one* of the men. On what principle of ethics, or by what process of logic, they could believe her as to *the other*, far surpasses our comprehension to divine. We have heard of persons who could 'blow hot and cold' with one breath; but how any person can swear falsely and truly at the same moment, or, supposing falsehood and truth to be mixed up together, how the truth is to be separated from the falsehood, so that the awful question of life or death can be satisfactorily solved by a just apportionment of belief and disbelief to the same testimony, we are at a loss to conceive. It is the maxim of the English law, that, if the Jury entertain a reasonable doubt of the guilt of the prisoner, they should acquit him: and surely to find that the prosecutrix had sworn wrongfully against the life of one of the prisoners, was cause enough to throw a reasonable doubt upon her evidence as to the guilt of the other.

Our Correspondent gives a case similar, as to the main point—namely, the conviction of one prisoner, and the acquittal of another, on the same charge, and on the same evidence. There are persons

in this country, who, if that case stood alone, would say that the Jury had arrived at their conclusion by a species of peculiar, Irish ratiocination. Yet it is precisely the same logic in the case at Ely as that in Ireland.

We shall now give the statement of our Correspondent, which he says he was induced to make by having just read the 'Case of Robert Folkes' in our Paper. He says—'A man named Coyle 'was indicted for a forcible abduction, and violence to the person 'of a female, named Mary Mitten; and a Roman Catholic Clergy-'man, named * * * *, for aiding and assisting in the abduction 'and violence. Another Roman Catholic Clergyman was under 'accusation for marrying the parties with a knowledge of these 'circumstances, they being of different religions. The case, 'which occurred in a northern county in Ireland, was tried before 'Judge MOORE. At a late hour the Jury returned their verdict, 'finding Coyle *guilty*—the priest *not guilty*. The *evidence* was the 'same as to both: they were tried upon the same indictment. 'The Judge observed, in very strong and feeling language, upon 'the inconsistency of the Jury, who, *discrediting* the testimony of 'the prosecutrix, acquitted the person at whose house, and by whose 'assistance, she swore her person was violated, and, at the same 'time *crediting a part of her evidence*, found Coyle *guilty*. In passing 'sentence of death afterwards on Coyle, his Lordship observed 'that he could not reconcile it to his feelings or to justice, to *allow* '*his life to be sacrificed under such circumstances*:—that, had the 'Jury found *both* prisoners guilty, he could not have afforded to 'either the slightest hopes of mercy; but, as the verdict threw a '*strong shade of doubt* on the *credibility* of the prosecutrix, he felt it 'his duty to the unfortunate man to state that he would recommend 'his case for an extension of mercy. He was shortly afterwards 'reprieved.'

Now, besides the inconsistent verdict of the Jury, which throws a 'strong shade of doubt upon the credibility of the prosecutrix' in Folkes's case, there is the other important circumstance of the prosecutrix stating that she had communicated the matter to a female friend, who, when called into the witness-box, deposed, that, although the prosecutrix had been in her company two hours on the day after the alleged offence was said to have been committed, she never said one word to her about it. There is also the contradiction given to the evidence of the prosecutrix, by the man who let her, her husband, and two other men into the hayloft,

in which they slept the night but one before the transaction occurred. There is also the contradiction given to the husband by a respectable farmer, who stated that the husband told him, contrary to what he deposed in Court, that he was 'willing to settle it for 'a few shillings; and, that if the prisoners would not settle it, he 'would seek for compensation elsewhere.'—Under all these circumstances, we trust the Secretary for the Home Department will see that he is bound, whether the Judge reports the case or not, to prevent *such a verdict* operating to the *sacrifice of life.*—*Morning Herald, Monday, April* 16, 1832.

Continuation of the case of Robert Folkes.

When we commented upon this case before, we were not aware of what has since transpired, to stamp utter discredit on the evidence, and infamy on the character, of the prosecutrix, and the man whom we then, in our ignorance, called her husband. It now aspears that the woman who called herself, upon her oath, Elizabeth Haythorpe, and who swore that she had been lawfully married to Haythorpe, and mentioned even the church at which she alleged they were married, and the clergyman who married them, was a girl whose name was Elizabeth Twite, not married to Haythorpe, but living with him in a state of prostitution, and in other respects of vicious mind and profligate habits.

It is one of the remarkable circumstances connected with this case, that the prosecutrix died suddenly while her victim was awaiting the dreadful fate which, on her evidence, had been awarded him. Enquiries had been previously set on foot respecting her pretended marriage, of which we will give the result in an extract from a letter written by a respectable Solicitor, not having any thing to do with the defence, and who only interfered from motives of humanity. He says, 'Very active enquiries have been made 'during the last week by our highly-respected Chief and Deputy 'Bailiffs (Colonel Watson and Mr. Wing,) and the worthy Chap-'lain (the Rev. Mr. King,) to ascertain the real facts of the case; 'the result of which has been, that they have proved, beyond all 'doubt, that the prosecutrix was never married to Haythorpe, and 'a letter to that effect is now in the hands of the Chief Justice 'STORKS, or the Secretary of State;—so that the conclusion must 'be, the whole of her evidence began and ended in wilful and 'corrupt *perjury*. Mr. Wing's confidential clerk went over to

'Gressinghall, and had an interview with the Rev. Mr. Hill (the 'clergyman who she swore had married her), and also searched the 'Register, but no entry was there; and the Rev. Gentleman, who 'stated that he knew the parties, avows that they never were mar-'ried. *The woman died on Thursday night*, at seven o'clock; and an 'inquest was held, and a verdict returned of "Died by the visita-'tion of GOD." Haythorpe has since been put in our cage, and 'broke out during the night; and it is said Knight (a companion 'of the woman and Haythorpe, and a witness,) and another man, 'are in custody, under a warrant for running away from the House 'of Industry with the parish clothes: and these are people upon 'whose evidence a man's *life* is to be forfeited! Yesterday our 'town was full of people *waiting for the execution*.'

We will now give some account of the conduct and character of Elizabeth Twite, as contained in a deposition of Mr. Edward Tice, Governor of the House of Industry, of Gressinghall, in the county of Norfolk.

He states 'the first time she came into the house was four 'years ago. She was then about thirteen years of age. After 'being there some time, she was taken out by the Parish of Dun-'ham, and put to service. She remained there, and was *tried* at 'the Norwich Sessions for *robbing her master*, Mr. Rex, and acquit-'ted. I was present at the trial, and had no doubt of her moral 'guilt. About two years ago she returned to the house; and she 'did not, to the best of my remembrance, leave it until the 6th of 'February, except on two occasions, when she was *committed to* '*prison* for misconduct in the house, in *leaving it* in the *night* time 'without permission, to *associate with men*, one of whom has since 'been transported:—two other women absconded with her on one 'occasion, and, with *three* men, slept in a barn. Her pretended 'marriage with Haythorpe is wholly false—there is no foundation 'for it whatever. On the first night of her absconding, on the 6th 'of February last, Haythorpe and she slept together at Litcham. 'The *general character of Elizabeth Twite is as bad as can be*—she 'is the *most notorious liar I ever knew*.' He then goes on to state that on the 6th of December last she left the house without leave, and was out all night; and, in contradiction to a plausible account which she gave of herself, it was proved that she had been at Gressinghall Fair *in company with soldiers*. She subsequently admitted the falsehood of her story, and was committed to the House of Correction at Walsingham for twenty-one days.

Such was the mode of education by which this wretched woman was qualified to become a witness, under our sanguinary laws, to take away the life of man. Many men are hanged upon such testimony in this highly civilized, and moral, and Christian country—testimony on which the life of a dog ought not to be sacrificed. The Jury were of opinion that her death had been accelerated by previous mental excitement. It is to be hoped it was the excitement produced by remorse.——*Morning Herald, Thursday, April* 26, 1832.

Case of Robert Folkes—Further remarks.

It will be recollected that we brought under the notice of the public, some time ago, the case of a man named *Robert Folkes*, who had been convicted at the last Assizes at Wisbeach of a capital offence against the person of a woman calling herself Mary Haythorpe, and left for execution by the Chief Justice of Ely (Mr. Serjeant STORKS).

As to the verdict, its value, in a logical point of view, may be easily estimated by any one of common sense, who knows that the same Jury, in the same Court, in the same breath, and on precisely the same evidence of the prosecutrix, found one man guilty, and acquitted another. It is true, one man called witnesses for an *alibi*, and the other did not; but, as the prosecutrix swore as positively to one as to the other, the Jury must have possessed very peculiar powers of reasoning, who could have declared her, in the same voice, as being both a *credible witness*, and one wholly *unworthy of belief*; yet such, from the same premises, was their contradictory conclusion.

But we did not confine our objections on the former occasion to the verdict, which was, in itself, bad enough, as a warrant on which to take the life of a fellow-creature. We shewed contradictions in the evidence which ought to have disentitled the prosecutrix to all credit; and, in addition, we were enabled to lay before the public facts which had been ascertained since the trial, and which placed it

beyond all doubt that the whole of the story of the prosecutrix was founded in gross and horrible *perjury*. For instance, she had sworn she was a married woman, and that a fellow, of the name of Haythorpe, who was a witness to bolster up the case, was her husband. She even stated the church in which they were married, which, by an enquiry afterwards set on foot by respectable and intelligent persons, was found to be a falsehood, invented for the occasion of hanging the man; she being a person who had run away with Haythorpe, from a House of Industry in Norfolk, having first committed a larceny by stealing clothes, and for which she and the man, with whom she was living in prostitution, were themselves liable to the cognizance of the criminal law. The man, we understand, has been since taken into custody; but the woman, though apparently in good health on the trial, suddenly died—whether from remorse of conscience, or dread of detection, is not known. The keeper of the House of Industry made a deposition, disclosing a series of her misdoings, and concluding by stating that she was 'the most notorious liar he ever knew,' and that he would not believe any thing she stated on her oath.

The man was *respited* on the eve of execution; but, though his life was spared by the Secretary for the Home Department, he is about to be transported for life, upon the perjured evidence which we have so fully exposed!—If this be called justice, it is a sort of justice which, instead of protecting the innocent, and punishing the guilty, exposes the former to the most dreadful perils, while it holds out encouragement to the perjuries of the latter. Under the circumstances which we have stated, we contend that *Folkes* was entitled to a *free pardon*. We are glad to find that the Earl of ALBEMARLE (Master of the Horse) has kindly undertaken to present a petition to THE KING on the subject, and that Lord HOLLAND has been humanely active on his behalf. We trust their efforts will not be unavailing to procure for the prisoner, and his unfortunate family, the

redress which, it is not clemency suggests, but, justice demands.—*Morning Herald, Saturday, July 7*, 1832.

Final Result in the case of Robert Folkes.

Our readers will recollect that we several times brought under the notice of Government and the public the case of *Robert Folkes*, who *was left for execution* on the Ely Circuit, upon a conviction obtained by the perjured evidence of an infamous woman, whose polluted testimony we sifted and exposed.

It will also be recollected that the unfortunate man was *respited* on the eve of his execution, and subsequently sent on board the hulks, to be transported for life.

We contended that, under all the circumstances, he was *entitled to a free pardon*, and ought to be restored to his home and his family. We have now the gratification of stating that His Majesty's free pardon has been extended to the prisoner; and it is due to Lord HOLLAND and the Earl of ALBEMARLE to add, that their humane interference has been auxiliary to this result.

If, in the case of the crime for which *Folkes* was convicted, the law had ordained, as in cases of murder, that execution should follow conviction in forty-eight hours, nothing could have saved this man. He must have perished on the scaffold; and the discovery of the perjured evidence of the *prosecutrix* would have only added another to the long list of fatal errors committed by passionate and precipitate law.—*Morning Herald, Wednesday, July* 11, 1832.

The Practice of offering Rewards in criminal Cases.

We have more than once deprecated, as a temptation to perjury and murder, rather than an aid to justice, the practice of giving rewards for blood, which is so much practised by the Government of this country, that it seems to have become a part of the settled machinery by which the execu-

tive power keeps in motion the system of sanguinary law. We are glad to find the *Courier* has taken up the same subject, and expressed such sentiments upon it as naturally suggest themselves to those minds which are anxious not only that the fountains of knowledge should be pure, but that they should be above all suspicion of taint.

The *Courier* says—

'It appears from a Parliamentary Return, that the amount of 'rewards paid in 1830 for the discovery of offenders in the disturbed 'districts, was £31,843. 8s. 8*d*., being at the rate of £17 per head, the 'number of prisoners having been 1,887. The amount is not large; 'but the principle of rewards partakes too much of the blood-money 'system to be tolerated in a country, the police of which ought to be 'on a good footing. We are not aware that rewards are given in any 'of the Continental States for the discovery of offenders, except, indeed, 'in the way of remuneration to spies, who are part of the police force; 'and it would be well if they were not known in this country: for, 'however desirable it may be to detect offenders by regular means, it 'cannot be desirable to make man-hunters of a portion of the community 'whose only object can be filthy lucre.'

We will add, that where evidence is solicited by a reward, and a conviction bought with money, the zeal to punish crime is too often the cause of the worst of crimes, by stimulating those man-hunters to spread their snares for innocent blood.

It is one of the maxims of our law, in relation to questions of property, that a person who has a pecuniary interest in the matter at issue, is not a competent witness to give evidence before a Jury, although the party against whom he comes to give evidence, would have the opportunity of sifting his testimony by cross-examination. Thus careful is the law that the evidence should be above suspicion, where property only to the value of a few pounds is concerned; but where the *life of man is at stake*—where the decision of a Court of Justice affects no less than the temporal fate, and, perhaps, the eternal destinies of a fellow-creature, the most depraved wretch that ever bartered the remnant of a conscience for

gold, is admissible to give evidence against the prisoner; and his polluted testimony is often the preponderating weight in the scales of Justice. Hence the sacrifice of many innocent lives, from time to time, in our Courts of Criminal Law, especially in times of excitement, and under *Special Commissions*; for, when there is alarm in the public mind, tales, otherwise incredible, are believed with a fatal credulity; and in a community where we find wretches who, for a guinea or two, will deliberately slaughter man, woman, or child, for the purpose of supplying their bodies to the *surgical shambles*, who can wonder at the efficacy of £50, £100, or £300 reward offered by the Crown, or other prosecutor, for the apprehension and *conviction* of any person whom the worst miscreants in society may choose to charge with the perpetration of a particular crime? It is possible under this system that a gang of *Burkites* might find it more profitable, and less dangerous, to *slay by due process of law*, than by the agency of the sleeping draught and suffocation; for, if even the crime be detected, this species of *murder*, by corrupt and perjured evidence, is not punishable with death.

In the case of a man named *Kidden*, who was unjustly charged at the Old Bailey with a highway robbery, the inducement to the crime of the three conspirators who swore away his life, was the reward of £40, which was, at that time, given by Act of Parliament for the conviction of a highway robber. This *innocent man*, who was an industrious porter, in the City, was *convicted and executed*; and soon after his death the foul conspiracy was discovered, which had torn an honest and hard-working man from his family, and sent him to an untimely and ignominious grave. The conspirators—namely, *Macdaniel* and *Berry*, and one *Mary Jones*—were thereupon indicted for murder, and convicted; but the Court respited them, in order that a point of law might be considered on motion in arrest of judgment. The Attorney-General of that day declined, for what reason we know not, to argue the point of law, and the prisoners

were subsequently discharged of that indictment. This happened about the year 1755; and it does not appear that they, in fact, suffered any punishment whatever for this atrocious crime; but being, along with others of this man-destroying gang, convicted of another conspiracy, founded on a charge against two individuals of mock robbery, also for the purpose of getting the reward, they were sentenced to the pillory, and imprisonment for seven years.

The case of a blood-money conspiracy of *Vaughan* and others, a few years ago, which nearly cost four poor men their lives, is too fresh in the recollection of the public to require any particular notice here. But though some of these judicial murders, for the purpose of obtaining the rewards of blood, have been detected from time to time, it is impossible to say how many innocent victims have fallen by such arts, where the villany, that cut them off from the earth, has been so well contrived, or so fortunate, as to have met with no detection. It is only within a year or two that two men were convicted of a highway robbery, and left for execution at Lancaster, upon the *mock charge* of a villain, whose diabolical contrivance was only discovered in time to save their lives, in consequence of an enquiry set on foot after the trial by some humane and considerate persons, who entertained doubts which had not occurred to the minds of the Judge or Jury.

A great proportion of men tried on charges affecting their lives, are not able to employ either Attorney or Counsel; consequently, the perjured testimony of false witnesses, if plausibly contrived, undergoes no searching cross-examination.—(See Note, at p. 233.)

Another great hardship and injustice is, that the law allows the prosecutor's Counsel to make a speech *against* the prisoner, and to give to the facts all the colouring of ingenious eloquence; while the Counsel *for* the prisoner is not allowed to make any comment on the evidence, or to shew by any speech how the facts may be explained consistently

with the innocence of the accused. There is an individual* holding a high situation in the Home Office, who, when simply a Whig out of place, exerted himself very much in Parliament to have this grievous injustice remedied, by allowing Counsel to speak *for* the prisoner, in cases of felony, as well as *against* him—and thus to assimilate the law, in those cases, to what it *is* in *high treason* and *misdemeanors*; but, since he has obtained the means of improving our system of justice by enjoying power, he has never opened his lips on the subject. We hope he has not 'stood mute, of malice prepense.'

We have alluded to this last grievance in the practice of our law here, because it is one of those things which serve to account for the facility with which men may be convicted on charges which affect their lives, in English Courts of Justice, on the most corrupt and perjured evidence; and there is nothing we know of, that tends more to engender such evidence, than the practice of *offering rewards* for the judicial *destruction of human life.—Morning Herald, Thursday, May* 3, 1832.

Peculiar Case of Henry Russel, the Huntingdon Gaoler, convicted of Murder.

The case of *Henry Russel*, who was tried and convicted at the late Huntingdon Assizes of being accessory to the murder of the late *Sarah Wormsley*, by inciting her to take poison, is a very peculiar one, involving a great and novel question as to legal principles, and as to the mode of administering justice under our Criminal Law.

We need scarcely preface our comments on this case by observing, that the heaviest punishment that dispassionate justice can inflict upon crime, falls deservedly upon the head of the person who is guilty of the cold-blooded, malignant, and cowardly offence of destroying life by poison; but, the more atrocious the charge against a prisoner is, the more danger there always will be of a natural feeling of indignation at the imputed crime disturbing the

* Hon. George LAMB, since deceased.

calm current of justice, which should be unruffled by any gust of passion, and should only reflect the clear image of the law.

The facts of the case are before the public. We shall not advert to them, except as far as is necessary for our argument upon *the points of law*, which we do not hesitate to say render this case perfectly unprecedented.

The prisoner was tried under an indictment, which stated, in the first count, that *Sarah Wormsley*, 'contriving and intending, of malice aforethought, to murder herself, did take and swallow a large quantity of deadly poison, called white arsenic, of which she died;' and, in the second count, it went on to say that *Henry Russel* 'feloniously, and of his malice aforethought, did incite, counsel, and command the deceased to murder herself in the manner and form aforesaid.'

Thus it will be seen that the indictment described the unfortunate woman as the *principal* offender in the wilful murder of *herself*, and the prisoner as the *accessary before the fact*. Though the indictment contained seven counts, the offence was laid substantially the same in all, only varying the form.

Now the evidence, as far it bore upon the intention with which the woman took the arsenic, went to shew that she did *not* take it with the *intent of poisoning herself*. If she were not intentionally guilty of self-murder, the *crime*, to which it was alleged in the indictment that the prisoner had been accessory, had *no existence*. There was no *principal* offender; and where there is no principal offender, there can be no *accessary*. The Counsel for the prisoner took this objection on the trial; but it and other objections were overruled by the Learned Judge (Baron VAUGHAN) who tried the case, but who will perhaps, upon reflection, consider this a case eminently demanding the solemn consideration of the FIFTEEN JUDGES.

Another novelty in this case, and one that might become a most dangerous precedent, was the receiving in evidence the deposition, or dying declaration, of the deceased. The statute of Philip & Mary, which prescribes the mode of taking depositions of witnesses, and of examining prisoners, by the Justices of Peace, and which statute has been re-enacted, with some variations, by the Act of the 7th Geo. IV, makes it imperative that the Justices shall take down the depositions of the witnesses upon oath, and reduce whatever is material to writing; and that they shall take

the examination of the prisoner *not* upon oath, and return such examinations and depositions into Court. The examination of the prisoner, when properly certified, can be used as evidence against himself on the trial. The depositions of the witnesses are only to assist the Judge in trying the case, unless a witness should happen to die in the interim; and then the deposition of the deceased may be read in evidence, if, at the time it was taken, the prisoner had an opportunity of cross-examining the deceased. In cases of murder, the dying declaration of the injured party has always been received in evidence against the person charged with the murder, if made under a consciousness of approaching death, which is considered equivalent to the solemn obligation of an oath, in inducing a person to speak the truth.

It appears that the deposition of *Sarah Wormsley* could not be admitted in evidence as a dying declaration, because she had not made it under a consciousness of dying, as was clear from her stating to a witness, that 'if she *recovered*, she would take tea with her the next Sunday.' But it was contended, that it might be received as the deposition of a witness taken upon oath, and reduced to writing. The prisoner had an opportunity of cross-examining the witness; but, as the woman was charged in the indictment as the principal offender, her statement ought not to have been received in evidence, because it was, in reality, not the deposition of a witness, but the confession of a *criminal*; and the confession of a criminal cannot be received, even against himself, if taken upon *oath*, and in no case can it be used as evidence against his or her partners in guilt.

But, supposing for an instant that the deposition of the deceased was properly received, it went to negative the whole *corpus delicti* to which the prisoner had been made accessory by the indictment; for it stated that the deceased did not know the consequences of taking the arsenic, consequently she had no intention of destroying herself; and, as we said before, there being no *principal* offender to the imputed crime of self-murder, there could be no *accessary*.

Besides, the Statute of 7th Geo. IV, gives the power of trying the *accessary*, to the Court which had jurisdiction to try the principal felon; but, in a case of self-murder, or *felo de se*, the crime is only enquirable in the Court of the Coroner, who, according to this statute, should *try the accessary*. The law is very imperfect

that leads to such a conclusion:—but such is the absurd consequence deducible from the *improved* law.—*Morning Herald, Wednesday, March* 14, 1832.

Decision of the Fifteen JUDGES *in the case of Henry Russel.—Renewed Proposal for a* COURT OF CRIMINAL REVISION.

The JUDGES having decided, after solemn argument, that the indictment on which *Henry Russel*, the Huntingdon gaoler, was tried and found guilty of a capital offence, is bad; we think it right to make a few observations on the case, especially as it is one which *we originally contended ought to be reserved* for the collective opinion of the Judges, upon the firm persuasion, for which we then gave our reasons, that the conviction was *against law.*

It will be recollected that we published our argument on this case a few days after the trial, while the condemned man awaited his dreadful doom, on which there did not appear to be then a single ray of hope. At the trial Baron VAUGHAN had overruled such points of law as were pressed upon his attention by the prisoner's Counsel, and left the prisoner for execution, under circumstances which seemed to preclude the chance of his listening to any reasons that could induce him to alter his then fixed determination to allow the sentence of *death* to be carried into effect.

Not having been present at the trial, we took such a view of the case as the reported facts seemed to warrant. We stated that 'it was peculiar, and involved a great and novel question as to legal principles.' We did not attempt to mitigate the criminality of the cold-blooded and malignant offence of administering poison to a human being. Our objection was to the illegality of the conviction, when there was another obvious, regular, and unobjectionable mode of proceeding, in which guilt could be punished, without establishing a dangerous precedent, by carrying into effect an indictment, framed neither upon any known principle of the COMMON LAW, nor in conformity with any STATUTE of Parliament.

Subsequently Baron VAUGHAN thought, as we did, that this was a case too novel in itself, and too important as a precedent, to be irrevocably determined on the authority of a single Judge; for, where *death* is the punishment, what revision of the sentence, when once executed, can there be? —what reparation of the fatal error?—No sooner was a *doubt* raised in the mind of the Learned Judge than, with a prompt sense of duty to the public and the prisoner, he respited the execution, with the view of submitting the case for the opinion of all the Judges, by whom the objections of the prisoner's Counsel were held to be valid.

If the Judge, in this instance, had been a heartless, obdurate man, who acted upon that false pride which considers it more dignified to persist obstinately in error, than surrender a first impression, or retract a mistake, the man must have perished *against law*, it is now beyond dispute; and a *principle of law* would have been *violated* by his death.

As to a COURT OF CRIMINAL REVISION in *matters of law*, it may be said there *is* one; for the whole body of the Judges constitute such a Court, when a legal point is *reserved* for their consideration. We admit that, so far, there is a Court of this nature, and the *most competent* Court that can be constituted; but, unfortunately, neither the prisoner nor his Counsel has any *right* to appeal to it. *Legal* points may be urged at the trial on behalf of the prisoner, and it is solely in the breast of the Judge to *reserve* them, or not. They may be frivolous, or they may be unanswerable; in either case he can dispose of them at the moment. If a doubt be not raised in his own mind, although every lawyer may have a doubt, it is quite *legal* for him to send the prisoner to be executed *against law*. This sounds paradoxical, but it is, nevertheless, the fact.

It does not always happen, even in England, that a Judge is always correct in his first impression on a point of criminal law. What we contend for is, that where a Judge refuses, in a capital case, to submit a point of law for the considera-

tion of the other Judges, the prisoner, or his Counsel, should have a right to have it submitted to that learned Body through the Secretary of State, who, on receiving an application of the sort, should be bound to submit it, and to stay execution in the meantime. Counsel would not often, for their own sakes, submit frivolous and groundless points to so high a tribunal. At all events, it is a less evil, that points not capable of being sustained, should be sometimes brought before the Judges, than that men should suffer death contrary to law. In *Russel's* case, not only was the indictment *bad*, but the *verdict* did *not sustain* the indictment.

In regard to *matters of fact*, we think it still more necessary to have a COURT OF CRIMINAL REVISION, to which the convict, on saying, 'I appeal,' might have his case referred; and the business of this Court would be to correct the errors that in the Court below might have resulted from passion, haste, prejudice, or excitement, [or perjury,*] and to see that the verdict was such as was sustained by the evidence. We would have, in fact, an intelligent, competent, and judicial tribunal, substituted for the secret, extra-judicial, and inquisitorial authority exercised in the cases of convicted criminals by the Secretary for the Home Department.

Immediately after our argument appeared on *Henry Russel's* case, and *while it was yet doubtful whether* Baron VAUGHAN *would respite the man, or not*, a Mr. * * * * * * * 'Professor of Medical Jurisprudence and Police,' published a letter in the *English Chronicle and Whitehall Evening Post*,†

* See the case of Robert Folkes, *ante*, p. 240, *et seq.*

† The following is a copy of the Letter in question; the writer's name being suppressed here, as well as in the paragraph taken from the *Morning Herald*.

'TO THE EDITOR OF THE ENGLISH CHRONICLE.

'SIR,

'Allow me to make one or two remarks in reply to 'some observations contained in your Paper of Thursday, relative 'to the case of the unfortunate *Russel*, recently convicted at the 'Huntingdon Assizes.

in which he undertook to prove our positions wrong, and consequently to establish the rectitude of the conviction. As our object was to induce the Learned Baron to reserve the case for the consideration of the other Judges, we thought it only decorous to leave it in the hands in which it was, confident that there would be a right decision. We now tell the 'Professor of Medical Jurisprudence and Police,' that his argument shewed he had no conception of the *real* question. Our argument was not whether the man had

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'You are right in stating that it is well worthy of the attention of the fifteen Judges; but it appears to me that you have 'fallen into a considerable error with respect to one point of law. 'The verdict returned by the Jury was to the effect, that the prisoner was *guilty of administering the poison with intent to procure* 'a *miscarriage*; and you thence proceed to argue that his life 'would not be sacrificed under Lord Lansdowne's Act (9 Geo. IV, 'cap. 31.) It is true, that the fact of "quickening" not being 'proved to have taken place, would, upon an indictment under 'that statute, make all the difference in the degree of punishment 'between the life and death of the prisoner, if the female *survived* 'the effects of the injury; but if she should *lose her life* in consequence of the means employed, the aspect of the offence 'becomes altogether changed; the offender is then guilty of murder, and it can be no exculpation of his guilt to say, that the 'party only intended to commit a minor offence, and not to cause 'the death of the female. I apprehend that it is clearly settled in 'law, that if any individual, in intending to commit, or actually 'committing, a felony, should undesignedly destroy the life of a 'man, he is guilty of murder, the unlawful act constituting all the 'difference between murder and manslaughter. In 1811, a man 'was convicted and executed at Stafford, for the murder of his 'wife. It appeared in evidence, that he did not intend to destroy 'the life of the woman, but merely to induce abortion by mechanical violence.* In this case it was hardly to be expected that the 'prisoner should be tried for an offence *not capital* under a particular statute, when by the COMMON LAW he was actually guilty

* *Vide* also the Case of *Margaret Tinckler*, tried at the Durham Assizes, in 1781. (Smith, Forensic Medicine, p. 325, *et seq.*)

committed *murder*, or not; but whether he was *rightly convicted* under an indictment which charged him as an accessary to the crime of *felo de se*. We came to the conclusion that this particular indictment was bad—so have the fifteen JUDGES. We would recommend to this gentleman, to be less precipitate for the future to engage in legal controversy in a way that betrays more of impulse than discretion, and to be sure, before he opposes an argument, that he understands it.—*Morning Herald, Saturday, May 5*, 1832.

Henry Russel's case continued.

[In the *Morning Herald of May* 9, 1832, there is a Letter, addressed by way of reply to the foregoing remarks; and, appended to it, the answer of that Journal. We shall here give them both.—ED.]

'TO THE EDITOR OF THE MORNING HERALD.

'MR. EDITOR,

'As I presume you have no wish to do me an 'injustice, I trust you will insert the following, in answer to the com-

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'of murder. The *verdict* of the Jury, then, in *Russel's* case, *does* 'not, *as I conceive, negative the indictment.* If the prisoner was 'found guilty of administering the poison, to procure miscarriage; 'and if, as was proved to be the case, in that attempted felony he 'was instrumental in the death of the female, he is *de facto* con-'victed of murder, and *the error in the verdict* has doubtless arisen 'from a misconception of the law on the part of the Jury.

'I have nothing to say with regard to the other anomalies 'pointed out by you in the case; but I may conclude by remarking, 'that there are few more anxious than myself to see our Draconic 'Code of Laws modified, so as to avoid the great and unnecessary 'sacrifice of human life which annually takes place in this 'country; still, in our zeal to save the living, we must not forget 'that something is due to the outraged laws of society, where so 'heinous a crime as murder is distinctly traced to the offender.

'I have the honour to be, Sir,

'Your very obedient Servant,

[Signed by the writer] * * * * * * *

'Lecturer on Medical Jurisprudence and Police.'

'ments contained in your Paper of Saturday, upon a letter respecting 'the case of *Russel*, which I sent some time since to a Contemporary 'Journal.*

'The letter which you have so harshly criticized, was not, as far 'as I know, published in *your* columns; and hence it appears to me 'the more necessary to reply to your observations. Now, Sir, the '*legality* or *illegality* of the *indictment* in Russel's case, upon which 'you dwell so much, was a *point* upon which I offered no opinion; the 'main purport of my letter being to shew *that* which no man acquainted 'with the law of England can deny, that where, in an attempted 'felony, the death of a party is the result, although the felony itself 'may not be capital, the *crime is murder*. You allow that if the pro-'ceeding had been *properly* instituted, the prisoner would not have 'escaped. You do not attempt to argue that he is *innocent*, from the 'evidence, but merely that the indictment contained *an informality*, 'by which his conviction, capitally, was not in accordance with the 'COMMON or the STATUTE law. If I had contended that the indict-'ment *was legal*, or that the conviction of the prisoner under *that* '*particular form of indictment was* according to the *strict letter of the* '*law*, there might perhaps have been some ground for your censures; 'but my letter had no reference whatever to *these points*, as the publi-'cation of it would at once prove. My argument was solely directed 'to the *nature* and *degree* of the man's guilt, from the *evidence* 'afforded on the trial, and from the *verdict* returned by the Jury. 'With respect to the legal anomalies in the case, I again repeat, 'I offered no opinion.

'I am, Sir, yours, &c.

'May 7.' (Signed) * * * * * *

[If this gentleman did not write to shew us to be in error, in arguing against the *validity* of Russel's conviction, for what purpose did he write at all? The guilt or innocence of the man was not the question, but whether he had been *legally* tried and convicted. Need we repeat it, that he was not tried for murder, but as an accessary to the crime of *felo de se*. The objection to the indictment was not, as Mr. * * * * * *, by another strange mistake, supposes, one of *form*, but of *substance*. How can he be competent to set

* *English Chronicle*, in which it appeared March 17.

others right upon a subject like this, if he thinks that an indictment, framed neither according to the COMMON LAW, nor to any STATUTE of parliament, is merely *informal*? Such an indictment is a *nullity*; and, of course, the whole of the proceedings founded upon it, *utterly illegal*. But, even if the indictment had been good, the verdict did *not support* it. The indictment charged *one* offence, and the verdict found *another*. Under these circumstances, to execute even a *murderer*—would have been *murder*.*]—*Morning Herald, Wednesday, May* 9, 1832.

Remarks on the practice at the Old Bailey Sessions, as to passing SENTENCE OF DEATH.

Our attention has been called by 'An Old Juryman' to the 'solemn farce' performed at the close of the Old Bailey Sessions, when the Recorder, as is usual, pronounced the

* The Learned JUDGE who tried *Russel*, and who left him for execution, declaring that no mercy could be extended to him, having, within the *forty-eight hours*—in which, the law says, a person convicted of murder, shall be taken from among the living—become somewhat shaken in his opinion as to the legality of the conviction, *respited* the prisoner, that the case might come under the consideration of the FIFTEEN JUDGES. It was subsequently argued before them by Mr. Fitzroy KELLY for the prisoner, and Mr. Biggs ANDREWS for the prosecution. *The result was, that the JUDGES pronounced the conviction illegal, the indictment not being sustainable.* Thus it appears that if the Learned JUDGE who tried the case, had as inflexibly adhered to his first opinion, as one of less reflection and more obstinacy would have done, a *legal murder* must have been the consequence; for the execution of the prisoner would have been *against law*.

It was now open to the prosecutor to prefer a new bill of indictment against the prisoner; but, under all the circumstances, it was thought advisable to allow him to avoid the jeopardy of standing a second trial, upon condition of being *transported* for fourteen years—the punishment awarded by the less penal provision of the LANSDOWNE Act, to cases of procuring abortion.—ED.

sentence of *death* on a considerable number of persons, 'not 'one of whom,' as our Correspondent says, 'in all proba-'bility, will suffer death, and the Learned Recorder know-'ing at the same time that most probably that will be the 'case.' Our Correspondent has not ventured *positively to predict* that *not one* of the persons of whom this last "batch" of capital convicts is composed, will not be *selected* to undergo the sentence which condemns them all to 'die according to law;' because his experience in the character of a Juryman must have taught him that, if our system of criminal law is cruel, the mercy that mitigates its rigours is *capricious*—that nine criminals convicted of a capital offence may be reprieved, and the tenth executed—that the capital punishment for a particular offence may become obsolete for a time, and *be revived again* in all its terrors—and that *a victim* may, now and then, be selected out of a number, from no higher motive than to shew, that, while a barbarous law *remains upon our Statute-book*, it will be dangerous to presume upon its not being carried occasionally into execution.*

All London saw, with astonishment and horror, last summer,† the law which inflicts death for stealing to the amount of *five pounds* in a dwelling-house, revived against a solitary wretch, who was strangled with a *sheep-stealer* upon the same scaffold upon which the "*Burkers*" underwent, the other day, the doom of their enormous crimes. Yet, nearly twenty years ago, the law which sentences the offender who steals £5 in a dwelling-house to the death of the *murderer*, was *abolished*, as far as a solemn decision of the House of Commons could abolish it; and a law framed, by the enlightened Sir Samuel Romilly, substituting secondary punishments for death, was carried, which the opposition of Lords Eldon and Ellenborough was but too successful in throwing out of the House of Lords. Who could have

* See remark at p. 118. † *Ante*, p. 115.

supposed that the law which a House of Commons, under a *Tory* Government, had pronounced a disgrace to the Statute-book, should ever have been deemed a sufficient warrant for the shedding of human blood by a *Whig* Ministry?

The revival of that law, as well as the execution for sheep-stealing, we deprecated, at the time, on every ground of rational justice, moral principle, and sound policy. Our sentiments, we know, were responded to by the just feelings of a Christian people, whose reason and whose hearts revolt at the inhuman spectacles sanctioned by laws that strip 'august and godlike Justice' of her moral attributes, and arm her with the weapons of Vengeance! But as long as such laws continue on the Statute-book, what guarantee have the public that, although, since the execution of *Widgett* and *Broach*, no criminals convicted at the Old Bailey, with the exception of *murderers*, have suffered death—what guarantee have the public, we say, that similar sacrifices may not be thought *expedient*, and that Mercy, pleading with all the powers of Reason on her side, may not be too weak to save, while ferocious laws say—'destroy?'

The *law of forgery*, too, like that relative to stealing in the dwelling-house, has been condemned by a deliberate and solemn decision of the House of Commons, after three debates. Yet it is not long since the present Government were on the point of offering up two victims to the destroying spirit of that law*—the two first that would have suffered under it; for its author shrunk from the execution of his own law. That evil was averted:—the example was not given, on whose consequences no one could calculate—that crime against the *principle* which the House of Commons, under the most adverse circumstances, recognised,† has yet to be committed.

When, therefore, our correspondent, the 'Old Juryman'

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* *Ante*, p. 152, *et seq.* † *Ante*, p. 52.

advises that,—instead of the Recorder passing the sentence of death, *vivâ voce*, on all the capital convicts at the Old Bailey, who know it is a mockery, and who treat it as such,—the practice at those Sessions in the City should be assimilated to the practice on the Circuits, where, in cases in which it is not intended that the law should be carried into execution, the sentence is merely '*recorded*,' we say—*No*. This practice was introduced by an Act of Parliament made for the purpose; and we ask if it would be worth while to pass another Act of Parliament merely to substitute *one sort of mockery* in a Court of Justice *for another*, as far as the City is concerned?—for the pronouncing the sentence of death in the one case is, at least to the great majority of convicts, an *oral* fiction, and recording it is but a *written* fiction. The former practice shews the absurdity of our present fierce and ineffective code of laws in a more marked and stronger light than the latter; and therefore we would rather see it retained, with the view of its facilitating a real—a substantial—a beneficent, and not a merely formal and deceptive change in our criminal laws.

We see that, notwithstanding all the difficulties in which France is involved, (and certainly her Government has quite as much to struggle with as our own,) her legislature is now employed in the great and glorious work of still further mitigating a criminal code which the legislation of NAPOLEON, amid all the cares and vicissitudes of incessant wars, had already made incomparably more mild than our own. We see that the Chamber of Peers have adopted a proposition for abolishing the punishment of *death* in two cases of HIGH TREASON, which our law punishes with hanging and subsequent decapitation. Every species of treason is, by our law, punished with *death* —even that of *counterfeiting the gold or silver coin* of the realm—though that is, properly speaking, *no treason*

whatever towards the kingly power, but, a *fraud* upon the public.*

Let us, then, not set about 'improving' the law once more, by rubbing off some of its excrescences, and giving a smoother exterior to its barbarism, while, in all its dangerous and malignant properties, it remains the same; but let it be so thoroughly reformed in essence and in spirit, that it may obtain from a civilized and Christian people the veneration due to a wise and effective system of criminal jurisprudence, wherein pure and passionless JUSTICE shall see the reflection of her own eternal principles.—*Morning Herald, Thursday, Dec.* 15, 1831.

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* In the next session of parliament (1832), a Bill, which Sir Robert PEEL, before leaving office in 1830, is understood to have prepared, for consolidating and amending the statutes against *Coining*, was passed, whereby the punishment of *death* was entirely repealed. (*Vide* 2 Will. IV, cap 34). Lord AUCKLAND, (whose father, Mr. EDEN, had written very ably against the indiscriminate severity of the Criminal Code,) being then Master of the Mint, had the honourable distinction of introducing this Bill—and the Government the merit of supporting its progress, in both Houses, with a degree of consistency which shewed that they *intended this* Bill *to pass*.

The effect of this change in the *Coining* Laws may be judged of by the comparative results obtained from Parliamentary Returns, *viz.*

COINING IN ENGLAND AND WALES.	*Executed.*	*Committed.*
First period, three years, 1826-27-28	7	27
Second period, three years, 1832-33-34, no longer punishable with death	*none*	18

The first period, ending with 1828, is selected, as being that in which the latest execution took place. By this table it is seen that fraudulent *Coining* was less effectually repressed by the terror of the gallows, than it has since been by a penalty *more certain* of enforcement.

Continuation of Remarks on the practice at the Old Bailey Sessions of passing Sentence of Death.

We commented the other day upon the practice which obtains, at the close of the Old Bailey Sessions, of passing sentence of *death* upon a promiscuous crowd of persons capitally convicted during the sessions, although, as to most of those criminals, or perhaps to all, the pronouncing of the 'awful sentence' is but the solemn enunciation of a fiction. Our readers saw, by our report of yesterday, that Mr. Charles PEARSON has brought this practice under the notice of the Court of Common Council, by putting a question to the Recorder, to ascertain whether an alteration of the law in this respect, so as to assimilate the practice in London to that which prevails on the Circuits, would be an infringement of the Corporate privileges of the City, or not—a question which the RECORDER answered in the negative.

The practice, as we have more than once shewn, is not merely an absurd, but a mischievous one, inasmuch as it converts the most terrible solemnity of the law into a mere farce—a farce, too, in which there is neither the merit of ingenious fiction, nor pleasant dramatic display. But who can wonder at any absurdity connected with either the theory or practice of a system of criminal laws, which outrages every principle of reason, moral truth, and sound justice; and which laws the force of enlightened public opinion has so far overcome, that their relaxation constitutes the general rule, and their execution the exception?

We consider the Act which empowered the Judges to *record* the sentence of *death*, where it was not intended to carry it into effect, as an alteration in the practice of the laws, which was one of mere *form*, and not of *substance*. What signifies it, whether an unmerited and unjust sentence of death be *pronounced* from the Bench, or entered on *record* by the verbal command of the Judge, if, in neither one case nor the other it be intended to carry it into execution?—unless that, in the latter mode of proceeding, the

genius of our criminal law seems somewhat ashamed of its own exterminating decree; and, while it orders a sentence to be recorded, which it dares not execute, shrinks from the parade and ostentation of giving the falsehood a theatric effect? We think it better that the solemn fiction should not be shorn of its ridiculous ceremonial. We would have it appear to the public eye in all its elaborate absurdity, lest another act of superficial and deceptive reform might have the effect of prolonging the existence of that inherent evil of our laws, of which it is but the 'outward and visible sign.'

But then the advocates for this superficial and deceptive reform may say, 'Would you keep criminals in suspense 'about their fate, when it is already resolved that they shall 'not be put to death?' To this we answer, in the first place, that, even where the sentence is *recorded* on Circuit, the Judge generally leaves the ignorant prisoner in uncertainty as to his doom, giving him a faint hope, perhaps, that his life *may be* spared, but telling him that mercy resides in another quarter, and it is not for him to anticipate its decision; thus giving him up for some time to the torture of anxiety. We answer, secondly, that the practice of recording the sentence of death at the Old Bailey, cannot be assimilated to the practice on the Circuits, without *invading the prerogative of the Crown*, and transferring to the RECORDER the *discretionary power over life and death*, which now belongs to THE KING IN COUNCIL.

When the RECORDER stated, in answer to Mr. PEARSON'S question, that he did not consider an Act to make the provisions of the 4th of Geo. IV, applicable to criminal trials in London and Middlesex, would, in the slightest degree, trespass upon any of the rights or privileges of the City of London, he must have considered it *no right or privilege* of the City, that its Corporate Judge should have what some have hitherto called the right, and others have called the privilege, allowed to no other RECORDER, of appearing in the Royal presence, and *reporting to* THE KING IN COUNCIL

the capital convictions which have taken place at each session, and taking *the Royal will and pleasure* thereon. Perhaps the RECORDER would rather take upon himself the responsibility of fixing the doom of the wretched convicts, who have, now, to await the decision of the highest authority in the realm. If that branch of the Royal prerogative were transferred to him, we are quite sure, from what is publicly known of *his* notions of criminal law, there are many of them tried at every session whom he would *not keep long in suspense!* They would know their fate very soon; but whether they would be grateful for the expeditious justice administered to them, is quite another matter.*

Now it is quite clear that to make the proposition of Mr. PEARSON and his friends effective, in speedily relieving the convicts from suspense as to their fate, THE KING must be called upon to surrender his discretionary power over the life and death of such criminals, to the RECORDER; or, otherwise, how could the Learned Officer of the Corporation say positively, what convicts were to *undergo* the sentence of the law, and what others were to have their lives *spared*, so that, in the former instance, the sentence might be *pronounced*, and in the latter, only *recorded*?

Our object is to have the *spirit* of the laws, not their outward surface, or mere practical forms, improved; and we would begin by promoting the passing of an Act to abolish the punishment of *death* in all cases of the mere violation of the *rights of property*, in conformity with the prayer of the LONDON JURORS' petition, as presented to the House of Commons, and energetically supported by Mr. (now Lord) BROUGHAM last year,† and presented to the House of Lords,

* The RECORDER here spoken of, it may be necessary to inform the reader, is not the Hon. C. E. LAW, who, so creditably to himself, and usefully to the public, at present fills that important situation.—For the very peculiar circumstances which led to the resignation of the late Recorder, see vol. ii,—the case of *Job Cox*.

† *Ante*, p. 77, *et seq.*

and no less warmly advocated, by His Royal Highness the DUKE OF SUSSEX last session.* Until such a reform shall have been carried into effect, and even one that will go beyond this, by introducing a more discriminating spirit of justice into our laws, with regard to some other crimes, we are quite sure that a large measure of *mercy* must reside *somewhere*, to counteract the sanguinary rigour of the laws. *Mercy* has been called the brightest jewel of the prerogative; *Portia* says it is enthroned in the hearts of Kings. It is certainly the greatest ornament of the Crown; and we confess we do not think that the most radiant jewel of England's diadem would be improved in lustre and beauty by being taken from the Crown of THE MONARCH, and stuck in the cap of the RECORDER!—*Morning Herald, Thursday, Dec.* 22, 1831.

Bill of Mr. Alderman H. HUGHES, *to extend the Act, for* RECORDING *Sentence of Death, to the Old Bailey.*

Our attention has been called by a Correspondent to the Bill of Mr. Hughes HUGHES, for extending to the Courts of Criminal Justice in the City of London the provisions of that Statute which allows the Judges, upon all the Circuits throughout England, to *record* the Sentence of Death, instead of pronouncing it *vivâ voce*, where it is not intended to carry it into execution.

Our Correspondent says, we were the first to notice the solemn farce in the terms of reprobation which it deserved. We certainly did notice it in no very laudatory terms on more than one occasion; but our Correspondent is mistaken if he thinks that we regard the Bill of Mr. HUGHES as introductive of any real or substantial improvement in our Criminal Law. We strongly objected to the solemn delivery of sentence of *death* in a Court of Justice, which was known to be a fiction and a mockery; but we also objected, and do object, to the recording of a similar sentence, when there is

* *Ante*, p. 166.

not, and cannot be, any intention to execute it. In the one case, a deliberate falsehood is *uttered* with all the solemnities of an awful truth; in the other case, it is *written down* in a very solemn manner also, for the edification of public morals, and the prevention of crime.

What is the great cause of this and many other gross anomalies which disgrace our Criminal Law? The multiplicity of capital punishments, which our Government and our Judges dare not execute, and yet are loath to part with. Does the Bill of Mr. HUGHES go the length of striking off a single one of those capital punishments from our Statute-book? Not one. His Bill has, however, *the approval and support of the Attorney-General.* We should like to see the Attorney-General bring into Parliament, or support, some Bill which would really have for its object the substantial reform of our Criminal Law. We fear that a merely *formal* improvement—if improvement it be—may retard, rather than accelerate, the era of that vital reform which the friends of enlightened legislation expected would, long before this time, have engaged the serious attention of the present Government.

We stated, some time ago, that a Bill such as Mr. HUGHES has undertaken to carry through Parliament, would necessarily interfere with THE KING'S prerogative; all capital convicts at the Old Bailey being reported to THE KING IN COUNCIL, in order to take His Majesty's pleasure whether the sentence is to be executed, or not. We confess that we should rather THE KING IN COUNCIL should decide this question than THE RECORDER, whose sentiments on the subject of the punishment of death are not of such a nature as to make us desire to see him armed with greater power than he at present possesses for carrying them into practical operation. If Mr. HUGHES's Bill transfers that power of selection for capital punishment to the RECORDER, which previously was exercised by THE KING IN COUNCIL, we must decidedly object to it; but, having stated thus much,

we shall wait to see what the provisions of the Bill really are.—*Morning Herald, Tuesday, March* 27, 1832.

Further Remarks on Mr. Alderman HUGHES' *Bill, occasioned by the* RECORDER'S *Address, in sentencing to death the convict Macdonough, for Forgery.*

Our objection to the Bill of Mr. Hughes HUGHES, for transferring THE KING'S prerogative, as far as it affects the lives of capital convicts at the Old Bailey, to the Corporation of London, and their judicial officer, the RECORDER, was not diminished by what fell from that Learned Judge upon the conviction of *Macdonough*, who was tried and found guilty of forgery at the late Sessions, and now lies under sentence of death. It is evident, from the expressions of the RECORDER on this and other occasions, that on his mind there is no doubt whatever of the wisdom and morality of the laws, which subject to the same punishment fraudulent invasions of the rights of property, and crimes of violence and blood. It is certain, from the whole tenour of his conduct on the Bench, that he conscientiously believes the laws which he has to administer, to be "the perfection of reason," and consequently the pure emanation of justice.

As to the convict *Macdonough*, whom the RECORDER desired to remember his awful situation, and prepare for the worst consequences, he was tried and found guilty on two charges; one of which was for forging an acceptance to a bill of exchange for £200, with intent to defraud Joseph Fletcher. It happened, however, that the attempt was not successful, as no money was advanced on the bill; and, though the guilt of the intention was the same, no person was in fact defrauded—no loss was suffered. In this crime, which is in reality but a written fraud, a particular mode of swindling, there ought to be the same distinction made between the *intent* to defraud, and the *actual execution* of that intent which prevails in other cases of *fraud*. If the prosecutor

had lost the £200 for which the acceptance was forged, the man's blood could give him no compensation, though, if he were of a vindictive disposition, it might gratify his revenge; but the law should not minister to that which the religion we profess, and the morality which we ought to practise, teach us to class among the most dangerous and degrading of human passions.

The other charge on which *Macdonough* was tried, was for having forged, on the 30th of September, 1829, an order for the delivery of ten packs of linen, with intent to defraud, &c. For the former offence of forging the acceptance, where no money was obtained, we are quite sure even the Government to which Sir Robert PEEL belonged, could never think of taking the man's life, after extending mercy to the *Rev. Peter Fenn*, *Mr. Savary*, of Bristol, and other great delinquents in this species of criminality; but, perhaps, it was thought that a second conviction for a similar offence might induce the Government to select him as the first victim to that 'Peel's Act,' which, in consistency with their very strong opinions when out of office, they ought to have made it one of the express duties of their Administration to repeal.

But let us see what is this second conviction: it is a conviction for a crime which is no longer *capital*. By PEEL's Bill the penalty of *death* was repealed for the offence of forging an order for the delivery of *goods*, although it still continues applicable to the forging an order for *money*. If the date be correctly given, the offence was capital when it was committed; for Peel's Act did not come into operation until the 23d of July, 1830. The law is bad enough; but surely the Government would never think of punishing capitally, at the present time, an offence which, under that law, has ceased to be capital, and which could only be punished with death by reviving a law of blood, that public opinion compelled even a Tory Administration to abolish.*

* The sentence of *Macdonough* was subsequently commuted.

It is a shame to England that the United States of America have abolished the punishment of death in all cases of forgery, and almost all the capital Statutes respecting property which they received from this country, strong as the influence of the commercial spirit is among them. But they are proceeding farther in the work of enlightened legislation, as will be seen by the following extract from the *New York Journal of Commerce*, of the 13th of March, 1832:—'State 'Legislature, 8th of March—Mr. STILWELL, from the Com- 'mittee, made a very long and able report on *capital punish- 'ment*, and introduced a Bill to *abolish* such punishment. It 'provides that, for such crimes as are now punishable with 'death, confinement in the State prison shall be substituted. 'Three times the usual number of the report were ordered to 'be printed.' If we still cling to our own favourite barbarisms, we must be content to be left behind in the race of civilization.—*Morning Herald, Monday, April* 30, 1832.

Observations upon the Letter of Mr. Alderman HUGHES, *regarding his Bill to extend the Act, for* RECORDING *Sentence of Death at the Old Bailey.*

We have received a letter from Alderman HUGHES, relative to our remarks on his Bill for allowing the sentence of death to be recorded at the Old Bailey. The Hon. Gentleman disclaims all intention of interfering with THE KING'S prerogative, and says—

'It is well known that generally three, but always two of the 'JUDGES of the land are appointed to assist in each delivery of the 'gaol of Newgate, and that those learned personages *try the capi- 'tal offenders*, and not the RECORDER, who, as respects such 'offenders, is the mere mouth-piece of the Judges, in passing, at the 'close of the sessions, the sentences they may have awarded. Surely, 'then, what our Judges are authorized to do each Circuit, at every 'Assize town in the kingdom, two or three of these learned individuals, 'sitting together, might safely be intrusted to perform at the Old 'Bailey Sessions.'

In this passage there is more than one error into which a legislator and a Magistrate of London ought not to have fallen.

It is true that two, and sometimes three, of the King's Judges assist in each gaol delivery at the Old Bailey; but it is quite incorrect to say that the Corporation Judge, *alias* the RECORDER, does not try capital offences. The unfortunate man, *Macdonough*, now lying under sentence of death, and to whose case we particularly adverted in the very article which drew forth this letter from Mr. Hughes HUGHES, was tried by the RECORDER, and not by one of the King's Judges. The remarks which were reported to have fallen from the RECORDER, at the close of that case, induced us to say that we felt our objections strengthened to a change in the law, which would give that Learned Personage more power than he already possessed, in deciding upon the fate of criminals.

Mr. HUGHES is also incorrect in stating that—

'The RECORDER is the mere mouth-piece of the Judges, in 'passing at the close of the session the sentences they may have 'awarded.'

He does not pronounce at the end of the sessions the sentences which the King's Judges award. He pronounces the sentences which the laws award to every person who has been convicted of a capital crime, they being collected together in a promiscuous assemblage, which contains offenders of all the various degrees of guilt, from the child, who, after nightfall, has broken a pane in a pastry-cook's window, and put in his hand to extract *burglariously* a penny bun—to the veteran delinquent, who has committed robbery with violence only short of murder; for, persons convicted of *murder* are not reserved to the end of the sessions, but must be hanged within forty-eight hours, by a law which, with a strange inversion of the principle of justice, where the charge is of the most atrocious nature, leaves less chance than in any other case for *innocence* to escape the fatal consequences

of a *precipitate* judgment. Had *Robert Folkes* been convicted of murder, he would have been now in his grave; and the blasting exposure of the polluted and perjured evidence,* on which he was convicted, would have availed nothing to the victim, his destitute widow, and fatherless children.

Mr. HUGHES further says—

'That, if considered necessary, there could be no objection to the 'introduction of a proviso, in the Committee of the Lords, (the Bill 'having passed the Commons,) confining to *the Judges of the land* the 'power of determining the cases wherein sentence of *death* should be '*recorded*, and those in which that awful sentence should be *passed*.'

Now, Mr. HUGHES must see that such a proviso would not be necessary, if he were correct in stating that the RECORDER is only the mouth-piece in pronouncing the sentences awarded by the King's Judges.

We ask the Hon. Gentleman, whether he would not be much more usefully employed in carrying a Bill through parliament to *abolish* altogether the punishment of *death* for offences, which it is both unjust and barbarous to confound with murder, than in attempting to patch up the outward form of a system, which is reprobated by all men of Christian principles and enlightened minds? This, to use an expressive scriptural figure, is the 'whitening the sepulchres out-'wardly, while they are within full of dead men's bones, 'and of all uncleanness.'

Mr. HUGHES says the cases of *doubt* will still be reserved for the decision of THE KING IN COUNCIL. We know not whether he means cases of doubt *upon the evidence*, or cases of doubt as to *whether the capital punishment* ought to be inflicted for the *particular offence*, although the evidence be quite conclusive of guilt. But, whichever it may be, we think it safer that THE KING IN COUNCIL should decide upon *all* the capital cases, than upon such only as the RECORDER

* *Ante*, p. 240.

and his coadjutors may choose to select.*—*Morning Herald, Wednesday, May* 9, 1832.

Mr. EWART's *Bill, for abolishing the Punishment of* DEATH *in certain cases of Larceny.*

[As the introduction of Mr. EWART's Bill constituted an important era in the progress of Criminal Law Reform, we shall here subjoin the substance of the Hon. Member's speech on that occasion, slightly corrected from the *Morning Herald,* and the remarks of that Journal.—ED.]†

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* The Bill of Alderman HUGHES did not pass the Upper House of Parliament. Its defeat there is mainly to be ascribed to the exertions of the late Lord TENTERDEN, then Chief Justice of the King's Bench, who viewed it as an interference with the Prerogative of the Crown. *Virtually* it would have operated in this way, and we are therefore glad of its rejection; as well as because it was a piece of mock legislation, calculated to retard substantial improvement. Whatever may have been the principal motive of Lord TENTERDEN,—for certainly he was no advocate of mitigated penal law,—we willingly assign him the merit of an *useful* act.—ED.

† Amongst various subjects introduced last night in the House of Commons, was one in which we have always felt a deep interest—the subject of capital punishments.

It is not our intention to make any observations, at present, on that important question; but we would refer our readers to the speech of Mr. EWART, and the short conversation which ensued, upon his motion for leave to bring in a Bill abolishing capital punishment 'in 'horse-stealing, sheep-stealing, cattle-stealing, and stealing in a 'dwelling-house—no person being put in fear therein.'

We were happy to find that, though Mr. EWART's motion did not go far enough, his speech was directed to a much wider range of amelioration and improvement than was embraced in the proposition itself. We may therefore calculate upon his advocacy, at some future, and we hope not distant, period, of a more extensive plan for the improvement of the Criminal Code. The support which Mr. George

HOUSE OF COMMONS.—TUESDAY, MARCH 27, 1832.

MR. EWART rose to move for leave to bring in a Bill for abolishing capital punishment in the cases of *horse-stealing*, *sheep-stealing*, and *cattle-stealing*; also in cases of *stealing in a dwelling-house*,—no person being put in fear therein. He owed an apology to the House for personally venturing to introduce the subject to their notice; but he had originally taken it up as an independent Member of that House, and he was not aware at that time of the years of attention and labour which had been devoted to it by the Hon. Member for Ilchester (Dr. LUSHINGTON), and other Hon. Members, for the benefit of the country, and to their own immortal honour. He did it simply on the principle, that an unduly severe punishment must be an extremely uncertain punishment—a principle which had been theoretically laid down by BECCARIA more than seventy years ago, and which had been practically illustrated in our times. But if this principle were true, that an unduly severe punishment is an uncertain one, how much more must an *irreparable* punishment be an uncertain one! Such a punishment was the punishment of *death*. Many punishments were more severe; this, when once inflicted, was beyond recall. Hence it was that prosecutors trembled at the punishment—that Juries hesitated—that Judges paused—and that guilt escaped unpunished, or rather was rewarded with impunity. He should at once proceed to the point, and submit to the consideration of the House, the Returns relative to this subject on their table. It appeared that in the year 1831 there were sentenced to death for *sheep-stealing* in England and Wales, 162 persons—executed 1; sentenced to death for *horse-stealing*, 125—executed 0; sentenced to death for *larceny in a dwelling-house* 113—executed 1.* Now in the United States, he (Mr. E.) believed that none of those crimes were capitally

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LAMB, the Under Secretary of State for the Home Department, gave to the motion of the Hon. Member may, we trust, be considered as a pledge that the Government is prepared, if not to take up the subject, to lend its assistance to those who are willing to devote themselves to the task.—*Morning Herald, Wednesday, March* 28, 1832.

* The solitary intances, in 1831, of one execution for *Sheep-stealing*, and another for *Larceny in a dwelling*, took place in London, May 25, having been ordered at the PRIVY COUNCIL, when the responsibility of advising the Crown devolved—upon whom? Will

punished; and none of them in France. But it might be said that this one capital punishment, occasionally inflicted, tended to prevent the crime. He denied the justice of executing a man for what others had been transported for. Even if he admitted that it is just, he would ask, is it effectual? He knew instances of Members of that House, who, rather than subject an individual to even this

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posterity believe it when we record, among the names of other early friends of ROMILLY, that of Lord BROUGHAM?—Yes—the same who—as Henry BROUGHAM, Esq., returned to represent in parliament the county of York—so eloquently condemned the *needless* severity of our criminal laws, on the ground of milder penalties being *more effective:* and who, upon that side, had been an able writer in the *Edinburgh Review!* What a practical exposition is here of the words of the same Mr. BROUGHAM in his splendid speech in the Commons, June 7, 1838, when he said—

'The Solicitor-General has recommended that we should suffer 'the punishment of *death* still to remain, seeing that we can, at present, 'rejoice in a humane Secretary for the Home Department, who bears 'his faculties meekly; and a Government which *would never be likely* '*to abuse the power with which it was intrusted, or to enforce a rigor-* 'ous sentence to the uttermost. This argument, I believe, has been 'also hinted by the Right Honourable Baronet (Sir R. PEEL) opposite; 'but so egregious and monstrous a doctrine it has never been my fortune 'to hear in this House before, although, since I have enjoyed a seat 'here, many extravagant doctrines have been promulgated in my 'hearing. Are we to be seriously told, that because, at a given 'moment, we have a moderate and liberal Home Secretary, and a 'Government *which may discharge its functions with popularity;* we 'should, *therefore, forsooth, confine our legislation to those accidents* 'of the hour, and so dismiss all concern for past, present, and future? 'We are called upon to legislate, not for this or that Administration, '(and the present may be of a duration very long, or—very short,—for 'aught that I know), but for posterity. Are we, then, to be called upon '*to swerve from our own opinions and principles, because we have con-* '*fidence in the Government?* This is pushing the argument of confi- 'dence, which we hear of in political and party matters, to an extent 'so monstrous, that I could hardly believe my ears when I heard it 'delivered by so correct and astute a man as my Honourable and 'Learned Friend the Solicitor-General.'

As to the execution for *sheep-stealing*, that it was *uncalled for*

contingency of capital punishment, waived the prosecution altogether. And it appeared on the evidence adduced before the Select Committee on Capital Punishments, in 1819, that one of the witnesses declared that his land had been laid waste by sheep-stealing; that he would prosecute, if transportation were the punishment; but never as long as it might be death. Mr. BRADFORD, a writer on the Criminal Law of America, fully confirmed this statement relative to the United States. He (Mr. EWART) proposed to substitute the next secondary punishment on the

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even by the advocates of expediency, is proved by the fact, that the crime was *on the decrease*, the total convictions in England and Wales for this year (1831) being 162, whereas they had been 213 in the preceding year. Moreover, the whole number convicted *in London* for the twelve months, was only 3, one of whom was the man put to death; while, out of all the convictions at the Assizes, amounting to 159, the JUDGES upon Circuit *did not enforce the sentence in a single case*. The Judges, to their credit be it spoken, had *practically* repealed the law, when it was *revived* in the way we have described.—(See *ante*, p. 115 & 125.)

For the offence of *Larceny in dwellings*, in not a single instance did the JUDGES upon the *eight Circuits* of England, 'enforce the 'rigorous sentence to the uttermost,' out of 71 cases convicted before them in 1831; and, that the crime was *not increasing in London*, the parliamentary Returns will prove. Then, as to the legislature, the COMMONS, in the time of ROMILLY, Mr. BROUGHAM, being one of his supporters, had twice passed a Bill to repeal the capital enactment. *What necessity*—if necessity can justify the shedding of blood—what necessity can be pleaded for this *revival* of a statute which, *in practice*, had been abolished by the Judges of the land?

At pages 212, 214, *et seq.*, our readers will see that, on the eve of a revision of the penal laws, and under *the same* Administration, the capital sentence for *Cattle-stealing* was ordered to be enforced, in London, after a lapse of *fourteen* years. So also was the extreme penalty for *Letter-stealing*. So of other offences, as in the cases of *Druitt*, *Attrell*, and some others:—*Vide post*, Vol. ii.

The advisers of the Crown are said to be 'responsible.' Are they responsible for *life sacrificed* to laws which they often had denounced, and which had slumbered on the Statute-book, until awakened by themselves into fatal activity? To whom are they responsible,—to God, or man?—ED.

Statute-book, which left the alternative of transportation, imprisonment, or solitary confinement. At the same time, this was open for consideration in Committee. With the permission of the House he would proceed to state, that the capital sentences for crimes with respect to property, during the year 1831, amounted to 1,108; the executions only to 23. Now, if we compared the probability of execution in France with that of England, we should find that, while the sentences to death in England amounted to 1,601 in the year 1831, the executions were 52. In France, in the same year, the capital sentences were 108—the executions 25. A similar difference might be shewn by going back for a series of years. The crimes punished capitally in France, were fewer and more strictly defined than those in England. Every one knew that the definition of burglary in England was not satisfactory. In France it was, under the name of '*Vol avec cinq circonstances*,' most clearly defined, and did not confound the lesser with the greater criminal, as was sometimes the case in the English law of *burglary*. In America also, in the States of Maine and Massachusetts, arms must be borne, and an assault be made by the prisoner. In New Hampshire, only treason and murder are capital; in Pennsylvania, only murder of the first degree; in Louisiana, under the code of Mr. LIVINGSTON, no crime is capitally punished. He (Mr. EWART) would not refer to the comparative state of European countries. They were amply given in the pages of LUCAS, DUCPETIAUX, DE TRACY, and many other well-known writers. But as a practical illustration within our own dominions (even of a barbarous country too), he would mention the Mahommedan law in Hindostan, by which he believed that murder only, or violent robbery, was capitally punished. In the East India Selections, Mr. METCALFE, the Resident at Delhi, in the year 1815, writes, that in that district they *never* punished with *death*, and that it was in no degree necessary. He (Mr. E.) was afraid that the STATUTE LAW of this country was the fertile parent of most of our sanguinary enactments—the COMMON LAW knew them not. The Committee on Capital Punishments, in the year 1819, stated that for the first thirty years after the Revolution, the *average* proportion of executions to convictions was 20 to 33; in 1830, they were 52 to 1,601. Sir Wm. MEREDITH, who represented Liverpool in 1777, stated that in the preceding reign, that of Geo. II, no less than *thirty-three* of these capital Statutes had been

passed; and he emphatically adds, that in his days the real hangman was the Member of Parliament. He (Mr. EWART) was afraid that these severe enactments rose from an imperfect representative system: they were the weeds of the Statute-book, and shewed the corrupt soil from which they sprung—a legislature which represented not the wants and wishes of the people. It was wise in a free Constitution to shew confidence in the people for whom it existed. If they were treated like political disturbers of their country, could you expect them to be otherwise than silent slaves, or discontented freemen? If you suspect them, by the sanguinary enactments of your Statute-book, to be prone to crime, can you hope them to be other than tame and silent victims, or audacious and incorrigible criminals? All example shewed that, in a free country like our own, they would be the latter. Besides, it was important that not only the sentence of the law, but the whole pressure of *public opinion*, should bear down upon the criminal. But if your enactments were *at variance with the opinions of society, they excited an antagonist force, and checked the influence and power of the law.* But if this were true in all stages of society, it was most true when society was in a disorganized state. A too-severe Criminal Code then produced a set of men ever ready to act as the advanced guard of anarchy and of revolution. It created a centrifugal force in society, which disturbed its balance, and interrupted the harmony of its movements. He anxiously hoped that His Majesty's Ministers would assist in any amendment which was attempted; but remedial measures were not sufficient —preventive measures were indispensable. If there were any admonition which he wished to be thundered in the ears of every legislature, it was this—'Educate your people; be not content 'with giving them a horror of the punishment; give them a 'horror of the crime also!' A proper system of amelioration should begin in education, and end in prison discipline. This was the system laid down by BECCARIA; this was the one suggested by Mr. LIVINGSTON, in his well-known Report on the Criminal Code of Louisiana. This was the suggestion of his lamented friend, Mr. ROSCOE—a name which he might be permitted to allude to as a '*memorabile nomen gentibus, et multum nostræ quod proderat urbi.*' Mr. EWART apologized for the length of time which he had detained the House; but felt a satisfaction at having expressed his opposition, as an independent Member, to some portions of our

code, which no time, no circumstances, could justify; which could be palliated only when they grew up beneath the shadow of the darkest barbarism, or of the most unlimited tyranny. The Hon. Member concluded by moving for leave to bring in the Bill.

Mr. STRICKLAND seconded the Motion.

Anticipated Discussion on the Second Reading of Mr. EWART'S *Bill, for repealing the punishment of* DEATH *in certain cases.*

The Second Reading of Mr. EWART'S Bill for abolishing the punishment of death for the offences of *horse-stealing, sheep-stealing, cattle-stealing,* and *privately stealing in the dwelling-house,* was fixed for this day.

We could wish that a measure, which goes to substitute corrective punishment for an exterminating one in certain offences against the rights of property, had been of a more comprehensive character, so as to include in its beneficial operation a greater number of the cruel enactments of our law; but we prefer a reform of even a small portion of our barbarous code to none at all, provided it be a reform that goes to the root of the evil in the particular cases to which it is applied—an amendment in *principle,* and not a mere alteration in *degree.*

Let us take the instance of 'privately stealing in the dwelling-house to the value of forty-shillings, no person being put in fear.' This was only *simple larceny* by the common law, subject to a minor punishment. It was first made a *capital* offence by the 12th ANNE, cap. 7; an Act which was passed soon after the inhuman rage for creating new capital felonies had begun to manifest itself in the English legislature, in subversion of the principles of the ancient and wholesome COMMON LAW. The enlightened Sir Samuel ROMILLY—whose persevering efforts, to restore dispassionate Justice to that authority which blind and unreasoning Vengeance had usurped, will cause his name to go down to future ages among those of the benefactors of mankind—brought a Bill into Parliament, to repeal the

punishment of death for this offence; which Bill passed the House of Commons, but was thrown out in the Lords.

But although that House stopped the progress of the Bill, as they did some other Bills of ROMILLY to improve our Criminal Code, it could not stop the progress of that spirit of civilization which causes the human mind to revolt more and more from punishments of blood. So the stealing of forty shillings in the dwelling-house remained a capital offence; but the severity of the law operated more as a protection to criminals than a repression of crime. Humane and Christian people declined to prosecute, rather than be accessory to what they justly regarded as judicial murder; and those who had less regard for human life, were frequently baffled in their efforts of revenge, by the 'pious perjuries' of Jurors, who hit upon the contrivance of evading the capital part of the Statute, by finding property stolen, of any amount, to be *under the value of forty shillings*. Thus it has happened that a person at the Old Bailey has been indicted for stealing a *ten-pound note* of the Bank of England; and the Jury, through a horror of shedding human blood, and yet not wishing to let the offender escape without some punishment, have found the *ten-pound note* to be of the value of *thirty-nine shillings*. By such a verdict the offence was reduced to a simple larceny—just as if the Statute of the 12th ANNE did not exist—and the offender, instead of being strangled on the scaffold, might be transported for seven years.*

* Upon the subject of perjured verdicts, the late lamented and truly estimable Lord SUFFIELD, to whose exertions for the mitigation of the penal law his country is deeply indebted, made some remarks which ought to be preserved. He was then speaking in his place in parliament in support of Mr. LENNARD'S Bill (to remove the punishment of death from the crime of *house-breaking*), the charge of which, in its passage through the Upper House, he undertook, and *faithfully* as well as ably fulfilled. Adverting to this, the Noble Lord observed, that 'Such a state of the law often induced Juries to violate their

Then came Sir Robert PEEL as a reformer of the law. What ROMILLY would have changed in principle, he thought it sufficient to alter in degree. The former would have repealed the punishment of death for this offence altogether —the latter weighed the life of man against a little pelf, and came to the conclusion that the price of human blood might, without any great danger to the State, be raised by the amount of three additional pounds sterling beyond what the legislative calculators of Queen ANNE'S reign had fixed it at. This alteration, not having excited any extraordinary alarm in the House of Lords, passed into a law; and the *minimum* price of human extermination was enhanced from 40 shillings to 100 shillings.

Not long since, a person was tried at the Old Bailey for stealing large sums in the dwelling-house. The evidence was such as made it clear that he had stolen *five hundred pounds*, or nothing. The Jury found that he had stolen *under the value of five pounds!*

Whatever Divines and moral Statesmen—who have more horror of perjury than *murder*—can say, such violations of a Juryman's oath will often be committed while our criminal laws remain as they are, and civilized men are less shocked

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'oaths. That he (Lord SUFFIELD) held in his hand a list of *five* '*hundred and fifty-five perjured verdicts* delivered at the *Old Bailey* in 'fifteen years, beginning with the year 1814, for the *single offence of* '*stealing from dwellings*, the value stolen being in these cases sworn '*above* forty shillings, but the verdicts returned being "*to the value of* '*thirty-nine shillings*" only. If required, he would produce the name 'of every one of these five hundred and fifty-five convicts, and shew 'the value proved to have been stolen. It deserved remark, that 'when the legislature raised the *capital* indictment to *five pounds*, in 'June, 1827, *the Juries at the same time raised their verdicts to four* '*pounds nineteen shillings*; thus still keeping it low enough to save 'the offender's life. This had happened under the one head of steal-'ing in dwelling-houses.'—(*See* Lord SUFFIELD'S *Speech in the House of Lords, reported in the Morning Herald of August* 3, 1833.) —*Vide ante*, Notes at p. 168 and 174.

at finding a verdict against evidence, than at being accessory to the shedding of human blood.

With regard to the two other offences included in Mr. EWART'S motion, we would observe that Sir Robert PEEL, as has been shewn by the author of the '*Comparative View of the Punishments annexed to Crime in America and England,*' under the appearance of ameliorating the law, actually introduced new *capital* enactments:—for instance, it was before Sir Robert PEEL'S 'amended' law, only simple larceny to kill a sheep, with intent to steal *the skin.* He made it *capital,* as he also did in the cases of killing any bull, ox, cow, or heifer, with intent to steal *the skin!* If Mr. EWART succeeds in rendering those laws less cruel and *revengeful,* he will make them more *effective.*

We cannot conclude this article without quoting the following forcible and appropriate passages from the *Liverpool Times:*—

'The difficulty with which Mr. EWART and all persons pursuing similar 'objects have to contend, does not arise from the strength of the arguments 'adduced against their views, but from the profound indifference with which 'such questions are regarded. A law to make or abolish a capital felony pro- 'duces less interest in the British Parliament than a Turnpike Act, or a Bill to 'widen a street, or excavate a sewer. In the latter case, at least two or three 'Members are interested, and their influence is always sufficient to secure the sup- 'port of that race of parliamentary jobbers which is ever willing to do one good 'turn for another—that is, to assist others in cheating the public, on condition 'they will return the favour when called upon to do so. But as nothing is to be 'gained, either in money, in praise, or in influence, by attention to laws, the 'immediate effect of which is not seen, and the ultimate consequence of which is 'seldom understood, the Criminal Law has always been left to the whim or 'caprice of individual members, and capital punishments have been accumulated 'to such an extent, that the law, if carried into effect, would be a greater curse 'to society than all the crimes that it is intended to punish. In the year 1830, '1,397 persons were condemned to death, and 46 were executed! Suppose the 'whole, or even one half, of the persons sentenced to die had been put to death, 'the law would have committed more deliberate murders in one year, than all 'the ruffians whom the country has produced, have perpetrated in the last twenty 'years; for it will not be maintained that the persons whom the law allowed to 'escape, had really deserved to die; and if they did not, to have executed them 'would have been nothing less than murder.'*

* 'We have at different times alluded to the unjust severity of our 'Criminal Code:—we resume the subject on the present occasion,

Again—

'Such questions as these will occupy much of the time of Parliament, when 'it is composed, as it soon will be, of men anxious to promote national rather 'than personal and party objects; and whatever, therefore, may be the fate of 'Mr. EWART'S Bill in the present Session, there can be no doubt that, with a 'little perseverance, he will be able to produce an amelioration in the Criminal 'Law, and to prevent it from continuing what it is at present—an object of con-'tempt and neglect, when allowed to slumber; and of horror and disgust, when 'roused into activity.'

In the sentiments expressed in the above passages we perfectly concur. The criminal apathy which disgraces

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'merely for the purpose of exposing a certain gallant Member of the 'House of Commons, who, did he entertain no other sentiments unpa-'latable to the people of England but the one to which we are about 'to allude, we think we may safely conclude that a reform in parliament, 'whatever it may do for the country generally, will have the effect of 'speedily expunging his name from the list of British senators.

'A few evenings since, when a Bill was before the House on the 'subject of the punishment by death, Colonel SIBTHORP opposed it, 'and in the course of his observations said, "he hoped that, next year, 'the expence of transporting convicts to New South Wales would be 'lessened at least one-third, by the prisoners *being consigned to the* '*gallows*, instead of transporting them to foreign countries!"—Thus, 'while the enlightened portion of the community, from one end of the 'kingdom to the other, are raising their voices in behalf of such mea-'sures as shall remove the public burdens from the lower orders of 'society, and consequently diminish crime, by taking away one of its 'prolific sources—*viz.*, excessive poverty; while every humane man in 'the empire is lamenting that the Criminal Code of England is the 'most severe in the civilized world—those of the "old school" are 'straining every nerve to delay the progress of civilization and good 'government; and, not content with opposing every measure, having 'for its object the good of the people at large, are seeking to imbrue 'their hands in the blood of those wretches who are, in many cases, 'the victims of their own corrupt legislation!

'We trust that at the general election, which must succeed the 'passing of the Reform Bill, all candidates who possess sentiments in 'any degree in unison with those of Colonel SIBTHORP, will meet with 'that rebuke to which they are so justly entitled, and be driven from 'the hustings, as men unfit to represent the feelings and wishes of a 'Christian people.'—*Essex Independent*, 1832.

parliament on a subject that concerns human life, will pass away with an unreformed House of Commons; and better men in better times will deem it a great and honourable duty to make the laws of England worthy the character of an enlightened and Christian nation.—*Morning Herald, Monday, April* 9, 1832.

Discussion in the COMMONS *upon the Committal of Mr.* EWART'S *Bill—Remarks.*

Mr. EWART, having at length redeemed his pledge of bringing on the discussion of the principle of his Bill for abolishing the penalty of death in the cases which we have already specified, has met with that support and success which the enlightened cause that he advocated so well deserved.

Our readers will recollect that the Bill was read a second time on a former day, on an understanding that the discussion was to be reserved for the Committee; and the result of that discussion, by which the Bill was carried unscathed through the Committee, not only affords a present advantage to the friends of rational justice and humanity, but is, we trust, an augury of future greater, and more decisive triumphs, which will have the effect of utterly destroying that spirit of barbarism which pervades and deforms our laws, and renders our whole system of criminal jurisprudence unworthy the civilization of the age.

It was a striking proof of the progress which enlightened principles of penal legislation have made of late, that even Sir Robert PEEL remitted his anxiety for the preservation of cruel and ineffective laws, so far as to give up the punishment of death for *cattle* and *sheep-stealing*, though he was still inclined to think, that *horse-stealing* was too serious a crime to be punished in any other way than by taking the *life of man*. It is, indeed, a serious offence against property, and so is *stealing privately in a dwelling-house*—another

crime for which he would retain the penalty of *death*. But to punish such offences *equally with murder*, is no less impolitic than unjust.

The moral distinction between the offence of theft in any shape, and crimes of violence and blood, is evident. The unperverted instincts of the illiterate peasant teach it, as well as the learning of the philosopher. To confound, by positive laws, crimes which are, and ever must be, distinct in their nature, is to confuse, as far as legislative acts can confuse, the moral perceptions of the people. A code in which *death* is the predominant punishment, cannot fail to have demoralizing consequences. It is calculated to shock or brutalize the feelings of man. It cheapens human life, and sets the dangerous example of shedding blood, for comparatively trivial causes. If even such a code *were* more effective than one of a temperate character to protect property we ask Sir Robert PEEL if that protection would not be bought too dear at the price of blood, and by the destruction of those feelings of reverence with which men ought to be ever taught to regard the inestimable gift of life?

There never has existed an inhuman code of laws in any country in which, under its influence, *murder* has not become of *more frequent occurrence* than under a rational and moral system of justice; nor need we wonder, when the legislature itself consecrates in its laws the example of revenge!

But sanguinary laws, besides encouraging ferocious habits in the people, are, as a protection to property, notoriously the most ineffective. We have, more than once, given our reasons for this opinion. We shall now content ourselves with adverting to those of others. The *Courier* of last evening, following the line of argument on which we had previously relied, has the following judicious passage, in reference to stealing in the dwelling-house:—

'We do not agree with Sir Robert PEEL that the abolition of 'the punishment of death for *stealing in a dwelling-house*, unaccom-

'panied by violence, will tend to the increase of the crime. The inapplicable severity of the law, as it now stands, has directly encouraged 'crime, by the uncertainty to which it has given rise, in the mind of 'the criminal, of any punishment at all resulting from the commission 'of his offence. The feelings of society are so strongly opposed to the 'deprivation of life, excepting in cases of the most palpable necessity, 'that moral and religious scruples deter many persons from prosecuting: 'Juries, avoiding their oaths, refuse to convict; while Judges shrink 'from giving sanction to the execution of the penalty which the law 'prescribes.'

The *English Chronicle* and *Whitehall Evening Post* says—

'Sir Robert PEEL still doubts whether the punishment of death 'ought not to be retained for *horse-stealing*, although it is so repugnant to the Christian feelings of the country, that it is seldom carried 'into effect, and remains in the Statute-book for scarcely any other 'purpose than to deter humane and conscientious persons from prosecuting, lest they might, perchance, be accessory to the guilt of blood; 'for, as long as the execution of a sanguinary law is dependent upon 'judicial caprice, it is impossible to say when its dormant severity may 'not be awakened, and the public feeling shocked by the destruction of 'the selected victim. Sir Robert PEEL still objects also to the repeal 'of the penalty of death for the offence of *privately stealing in the 'dwelling-house;* because he thinks property so circumstanced cannot 'be sufficiently protected by any minor punishment.—How is it protected by the existing law? The punishment of death hangs over the 'head of the offender, and yet the *crime increases*. If that be his 'proof of the efficacy of the punishment of death for *stealing in the 'dwelling-house*, the sooner it is got rid of, the better.

'The fact is, the very idea of that dreadful penalty prevents 'humane, considerate people, in this, as in many other cases, *from 'prosecuting*. Many a man allows a dishonest servant to escape, 'when the law has left him no alternative, but either to decline prosecuting, or hang him. A moderate punishment, by the certainty of 'its infliction, would be a more efficient check to crime, and, of course, 'a more efficient protection to property.

'Did he never consider, that to punish the offence of *stealing in 'the dwelling-house* equally with *murder*, is an inducement to thieves to 'add the latter offence to the former, whereby they get rid of witnesses, and do not expose themselves to any greater punishment, if 'convicted? We are glad to see the more firm and decided part

'which the Chancellor of the Exchequer, the Attorney-General, and 'Mr. Geo. LAMB, took on this occasion, than when Mr. EWART *first* 'introduced his Bill. The country is also greatly indebted to Mr. 'F. BUXTON, Mr. Cutlar FERGUSSON, Mr. LENNARD, Mr. SHAW '(the Recorder of Dublin), Mr. J. CAMPBELL, Mr. O'CONNELL, 'Mr. HUME, Mr. CRAMPTON (the Irish Solicitor-General), and 'some other Hon. Members, for giving to this important and enlight-'ened measure their firm and intelligent support.'

Morning Herald, Friday, June 1, 1832.

Committal of Mr. EWART'S *Bill in the* LORDS.—Lord WYNFORD'S '*Amendment*,' *depriving the* JUDGES *of the discretionary power to mitigate punishment.*

The DUKE OF SUSSEX, Lords HOLLAND and SUFFIELD, the Bishop of CHICHESTER, and various other Peers, presented numerous petitions, praying for an amelioration of the Criminal Code. Lord HOLLAND, in presenting the petition from Warrington, spoke in its support, and declared that the terms of the petition were supported by the great bulk of the people; and that a revision of the Criminal Code was called for by all the principles of 'philosophy, religion, and sound policy.' Lord SUFFIELD expressed the great gratification he felt, that there was a Bill now before them for the amelioration of this Code.

It was afterwards moved, that their Lordships go into Committee, for the purpose of taking into consideration 'the Punishment of Death' Bill [Mr. EWART'S]. Lord TENTERDEN and Lord ELDON, it will be seen, entered into extended comments and elaborate criticism of the Bill. The latter Noble Lord contended that the fear of death operated more powerfully in the mind to prevent crime, than any other sort of punishment. His Lordship also urged that, before the capital punishment was repealed, they should know what were the secondary punishments. Lord DACRE supported the amelioration. Lord WYNFORD, at much length, opposed the Bill, and the Lord Chancellor powerfully supported it.*

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* It was in this stage of Mr. EWART'S Bill in the Upper House, that Lord WYNFORD, having been disappointed in his efforts to preserve the penalty of *death*, endeavoured to 'spoil the Bill,' by making the new law more severe in the generality of cases than the old capital law had been, *when mitigated by the discretionary power*, which the

The growing disinclination of the public to the infliction of death punishment, at least to the almost indiscriminate infliction of it, which has long been peculiar to the legislation of this country, is not likely to be arrested by the discussion which took place in the House of Lords last night.

It is true that Lords ELDON, TENTERDEN, and WYNFORD did their best for the law as it stands. Even left to themselves, their speeches would have done no great harm; for, the question has been discussed too often, and is understood too well, to allow their opinions to pass for more than they are worth. But, accompanied with the able commentary, of the Lord Chancellor (BROUGHAM), they sink into utter

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JUDGES hitherto possessed, of lightening the sentence, *according to the degree of crime*. How did the Learned Lord accomplish this? By proposing an 'Amendment,' by which the *minor* penalties should be all cancelled in Mr. EWART'S Bill, and the *extreme* penalty alone retained. This extreme penalty was transportation *for life*. By this 'Amendment,' the JUDGES on Circuit are deprived of the power of passing any lighter sentence, *however light the offence*; and, in order to relieve themselves of the imputation it brings, they are often compelled to publicly cast the odium on the law. But the reader must remember it was Lord WYNFORD'S legislation—not Mr. EWART'S.

In the following session of parliament Lord LYNDHURST, (see Debates in the Upper House, May 7, 1833), forcibly pointed out this '*anomaly*,' by which the discretionary power was removed from the JUDGES, to the inquisitorial office of the HOME SECRETARY, where the new law had been enforced in a degree that was, said his Lordship, 'harsh and unjustifiable;' for, that out of *three hundred* convicts thus doomed to transportation *for life*, the Home Secretary, Lord MELBOURNE, had mitigated the sentence in *only ten* cases. We hope that Lord LYNDHURST, whose speech we had great satisfaction in hearing, will persevere in getting this 'anomaly' removed; and, that he will otherwise lend his great talents, in the legislature, to procure a mitigation of other irrationally severe Statutes, which, as a JUDGE, he has given many proofs that his nature shrinks from administering.—*(See an article in our second volume, taken from the Morning Herald, of May 3, 1833.)*—ED.

insignificance, and lose the power of imposing, even for a moment, upon any unprejudiced mind.

There was one observation of Lord TENTERDEN, to which, as it has something of a plausible sound, we would direct attention. His Lordship stated, in rather a triumphant tone, 'amongst all the complaints which were made of the 'severity of the law of England, he had heard none of the 'manner in which the law *was administered.*' Now there is a want of ingenuousness in this mode of putting the argument. Uncertainty of punishment is one of the topics relied upon by the advocates of an ameliorated code, to shew that the practical working of a sanguinary code is bad. But nothing could be farther from the intention of those who urged the topic, than that it should be tortured into a compliment to 'the manner in which the law is administered.' On the contrary, we defy his Lordship to point out any speech or publication, on that side of the question, which does not lament the multitude of instances in which those savage laws are carried into execution, that are administered every year, to the outrage of all mercy and humanity. His Lordship must have studied but one side of the question if, indeed, he continues in ignorance, up to this moment, that any complaints have been made against the manner in which those laws are administered.

But we will not detain our readers from the debate itself, which they will find of sufficient importance to require an attentive perusal.—*Morning Herald, Tuesday, June 26,* 1832.

Strictures upon Lord WYNFORD'S '*Amendment,*' *depriving the* JUDGES *of the discretionary power as to Punishment.*

It was a fine emanation of the anti-reform spirit that impelled Lord WYNFORD, when he could not prevent the passing of the Bill which abolishes capital punishment in particular cases, to endeavour, by depriving the Judge of all

discretion in the apportioning of punishment to crime, to keep the law as close to barbarism as possible, without the actual sacrifice of life. Under its influence, though *sheep-stealing* cannot now be punished with death, it must be punished with transportation *for life;* for Lord WYNFORD'S "Amendment," which the LORDS forced upon the House of COMMONS, provides that there shall be *but one punishment*, and *that* the next in severity to death itself, for all offences which bear the same name, however they may *differ in degree*, or in the circumstances which aggravate or palliate criminality.

Lord WYNFORD, no doubt, congratulated himself, that, by the success of his amendment, he had preserved as much of the spirit of the old law as was necessary to qualify the dangerous lenity of the new one. He has already had an opportunity of seeing how it works in more than one instance by the reports of trials which have lately taken place; and, if the severity of justice be that part of it which his Lordship most delights in, he certainly may rejoice that his labours have answered their end. But the public will come to a different conclusion. They will read, in the spirit of his Lordship's legislation, a warning against the too easy adoption of the authority of Judges in *making* laws, however sagacious those Judges may be in the *interpretation* of laws made by others. The fact is, that the education and functions of a Judge are neither of them favourable to enlarged views of jurisprudence. Their study is the law *as it exists;* and to alter that law, is to bury their wisdom. What man, but a Judge, could betray such a dread of the humanity of Judges, as to deny them the power of mitigating punishment, for fear of its abuse in their hands? Experience and self-examination ought to have prevented such a mistake.* —*Morning Herald, Friday, July* 20, 1832.

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* See article from the *Morning Herald*, May 3, 1833, in our Second Volume.

The practical effects of Lord WYNFORD'S '*Amendment*' *to* Mr. EWART'S *Bill.*

[The following judicious remarks appeared in the *English Chronicle of Saturday, July* 28, 1832:—]

At every Assize town on the present Circuits some cases occur, which cause the Judges to animadvert, in no very complimentary way, upon the specimen of penal legislation which Lord WYNFORD has given to the country, by introducing into Mr. EWART'S Bill the compulsory clause which makes it *imperative* upon the Judges in every case of *cattle-stealing*, *sheep-stealing*, *horse-stealing*, and *stealing privately in a dwelling-house*, to sentence the offender to transportation *for life.*

In the Bill, as originally framed, there was a certain degree of discretion allowed to the Bench; because it is impossible so to legislate *à priori* upon criminal acts, as to ascertain *exactly* the *degrees* of guilt of each particular case, and fix the punishment accordingly: for though the crime, in the abstract definition, is but simple, the circumstances under which it can be committed, may be infinitely varied. But, though there was a discretion allowed to the Judges by the original Act, it was *limited* discretion; for the Bill fixed both the *maximum* and the *minimum* of the punishment: the former being transportation for life; and the latter, transportation for seven years, or imprisonment for not more than four, nor less than two years.

We object to a *boundless* discretion being given to Judges, because it may lead to great partiality and oppression in the administration of justice. We would have punishments fixed and certain, *as far as that can be done by legislation;* but to take away *all* discretion from the Bench, because all possible cases of crime cannot be anticipated and provided for by the positive enactments of law, is absurd, and may be, as in the instance of Lord WYNFORD'S "amendment" to "EWART'S Bill," highly mischievous. It is unjust and preposterous that the man who steals a single lamb, should be subjected to exactly the same punishment as he who steals a flock of twenty or fifty sheep; and yet, in consequence of Lord WYNFORD'S intermeddling in penal legislation, for which he has not the requisite enlargement of mind, intelligence, or temper, these two instances of crime, so widely different in their degrees of guilt, are punished exactly in the same way—namely, *by transportation for life.*

The cottager who, under the pressure of severe distress, steals a

sheep, to feed himself and starving family, commits an offence not to be compared for a moment with that of the butcher who avails himself of the facilities of his trade, to steal his neighbour's flock, and dispose of it in the market. Lord WYNFORD'S clause makes no distinction in the punishment, contrary to every principle of justice, as well as to the suggestions of good policy.

So, as to the offence of stealing in the dwelling-house, the degrees of guilt may be greatly varied according to circumstances. The person who steals £5 in the dwelling-house, he or she not being a servant, nor holding any confidential situation, commits a very inferior offence, in degree, to that of the person who, being a servant, or holding some confidential situation in the household, steals £500 or £5,000; and yet the same sentence must be pronounced against both. Can any thing be more unjust in practice—any thing more monstrous in principle?

We always objected to the JUDGES being invested with the great and dangerous discretion of *taking* or saving human *life*, because we consider *that* too high a discretion to intrust any human beings with. We would, under no circumstances, have the life of man depend upon the arbitrary will, the temper, or caprice of a Judge; but, in punishments which do not affect life, when once the *maximum* and the *minimum supplicii* are fixed, we consider it essential to justice, that a qualified discretion should be permitted, to meet the guilt of the intermediate cases. On this principle Mr. EWART'S Bill was originally framed, and Lord WYNFORD, who had always opposed the repeal of the penalty of *death*, seems resolved to *mar the measure at all events*; and, finding that he and his party could not throw out the Bill altogether, they hit upon a project well calculated to bring it into disrepute, or, perhaps, to induce Mr. EWART to throw it up in disgust, rather than let it go forth to the world identified with his name, and having tacked to it a provision of such injustice and absurdity, as to render it, in the essential point of punishment, equally tyrannical and ridiculous.

We hope, that, in the next session of parliament, the "Amendments," which both reason and experience denounce, will be expunged, and the original provisions of the Bill restored.—*English Chronicle, Saturday, July* 28, 1832.

GREAT MEETING *at Exeter Hall, on Saturday, June* 2, 1832, *to petition the Legislature against* CAPITAL PUNISHMENTS.

[We would direct the attention of our readers to the important PUBLIC MEETING which took place on Saturday,

at Exeter Hall, on the subject of Capital Punishments, a report of which appears in our columns this day. Having upon many occasions advocated the policy, as well as the justice and humanity, of mitigating the spirit of our sanguinary laws, it is with great satisfaction we observe the advance which society has been gradually making in the same direction of late, and the circumstances which seem to favour a still more successful, because more rapid, progress of the cause from this time forward. In addition to the success of Mr. EWART'S Bill, which seems likely to be carried, we may appeal to the Meeting already mentioned, as evidence that the reign of blood in the penal code of England is drawing fast to its close. It is a circumstance worthy of remark, that the Speakers at the Meeting in Exeter Hall were, not only eminent and able men from the three countries, but, for the most part, were Members either of the *Legislature*, or, of the *Bar*—that is, men engaged in pursuits which gave them the best opportunity of deciding, either upon the theoretic merits, or upon the *practical* results of the existing system. The Meeting dealt in facts, as well as in principles; and we would refer our readers to the eloquent statement of Mr. O'CONNELL, whose practice as a criminal lawyer afforded him ample means of tracing the operation of the system of capital punishments as administered by our tribunals.]—*Morning Herald, Monday, June* 4, 1832.

[Our narrow limits, we regret, entirely forbid our attempting to give even a brief report of the interesting Speeches at this important and highly respectable Meeting, which numbered nearly two thousand persons.—ED.]

In the absence of His Royal Highness the DUKE OF SUSSEX, who, as PATRON of the Association, had intended to preside on this occasion, Lord NUGENT took the Chair.

The cause of His Royal Highness's absence had been previously explained to the Meeting by Mr. William ALLEN, who, as Chairman of the Committee, had received a letter from the Royal Duke, stating that "an unavoidable public duty called him elsewhere, and that therefore he should not be able to be present at the Meeting. He had anticipated much pleasure from the information which he knew he should have received there; but unfortunately he was obliged to preside at the Board of Inspection at the Greenwich Observatory, and the day of meeting was fixed by Charter. He had not been previously aware of that circumstance; and he wished to convey to the Society his assurance of the warm interest which he took in the cause, and his hearty wishes for the success of their undertaking." Mr. ALLEN stated that he was so well acquainted with the feelings of the Royal Duke, with regard to the great object which they had met to promote, that he was sure it was a serious disappointment to him to be prevented from presiding at the Meeting.

The several RESOLUTIONS proposed at this important Meeting, were passed with entire unanimity. We subjoin them, together with the names of the gentlemen by whom they were respectively brought forward.

The REPORT of the COMMITTEE of the Society for the Diffusion of Information on the Subject of Capital Punishments, by whom this Meeting had been convened, having been read by William ALLEN, F. R. S., it was,—

On the motion of Basil MONTAGU, Esq., seconded by George STRICKLAND, Esq., M. P.,

(1.) RESOLVED—'That the Report now read, be received and 'adopted.'

On the motion of Thomas Barrett LENNARD, Esq., M.P., seconded by Joseph HUME, Esq., M.P.,

(2.) RESOLVED—'That the efficacy of Criminal Laws depends less 'upon the *severity* of punishment than the *certainty* of infliction; 'and that laws, which cannot be carried into execution without 'shocking the feelings of society, and exciting sympathy for 'the offender, are contrary to reason, inconsistent with morality, 'and opposed to the interests of justice.'

On the motion of Thomas WYSE, Esq. M. P., seconded by Dr. LUSHINGTON, M.P.,

(3.) RESOLVED—'That the Criminal Laws of England are of a cha-
'racter so vindictive and barbarous, as to be utterly incapable
'of uniform execution; and that, consequently, under the pre-
'sent system, the lives of men depend—less upon the precise
'and express provisions of law, than—upon the temper, feeling,
'or caprice of a Judge, or Secretary of State; whence it arises,
'that all the Assizes and Circuits throughout England afford
'examples of inequality of punishment, and practical proofs of
'the arbitrary discretion exercised in the selection of victims
'for the altars of sanguinary Justice.'

On the motion of Daniel O'CONNELL, Esq. M.P., seconded by J. Sydney TAYLOR, A. M.,

(4.) RESOLVED—'That the excessive severity of the law operates to
'the total *impunity* of a great proportion of offenders, by deter-
'ring humane persons from prosecuting, and by holding out a
'temptation to JURORS to violate their oath rather than be acces-
'sory to judicial murder,—while almost all the capital punish-
'ments now on the Statute-book, are *innovations* upon the tem-
'perate and wholesome principles of the ancient COMMON LAW
'of the land, which had ever been admired for its humanity and
'wisdom by the greatest legal authorities, and is coeval with
'the noblest and best principles of the English Constitution.'

On the motion of William EWART, Esq., M.P., seconded by Lewis FLANAGAN, Esq.,

(5.) RESOLVED—'That FRANCE having recently introduced ameliо-
'rations into her Criminal Code, which was previously far less
'sanguinary than our own,—and the United States of AMERICA
'having abolished nearly the whole of the exterminating statutes
'received from this country,—it behoves the British Parliament
'not to neglect those enlightened examples, but,—to do that
'which the true interests of justice, as well as of humanity,
'require, by introducing such a thorough and efficient reform of
'the Criminal Law, as will render it more auxiliary to public
'morals than to private vengeance; and, by a judicious system
'of prison discipline, afford that *protection to property*, of
'which all persons may avail themselves, without purchasing it
'by the sacrifice of human life.'

On the motion of Stephen CURTIS, Esq., seconded by Warwick WESTON, Esq.,

(6.) RESOLVED—'That a PETITION, in conformity with the Resolu-
'tions passed this day, be presented to both Houses of the
'Legislature.'

On the motion of Alexander BARRY, F.R.S., seconded by William ALLEN, F.R.S.,

(7.) RESOLVED—'That the thanks of this Meeting are due, and are
'hereby presented, to the following distinguished individuals,
'who have signalized themselves in their enlightened advocacy
'of the cause of rational justice, and the interests of humanity;
'—and, that they be nominated HONORARY MEMBERS OF
'THE SOCIETY FOR DIFFUSING INFORMATION ON THE
'PUNISHMENT OF DEATH,* viz. M. GIROD de L'Ain, (Pre-
'sident), M. M. Le General LAFAYETTE, Victor DE TRACY,
'BARTHE (Minister de la Justice), and ODILLON BARROT,
'(Members of the French Chamber of Deputies): to M. Charles
'LUCAS, (Inspector General of the Prisons of France), M. M.
'CAILLOUÉ and ISAMBERT, Advocates, of Paris; to M. le
'Comte de SELLON, Member of the Sovereign Council of
'Geneva; to M. Ed. DUCPETIAUX, Inspector General of the
'Prisons and Benevolent Institutions of Belgium; and to ——
'STILWELL, Esq., Member of the State Legislature, New
'York.'

It was then moved by William GLOVER, Esq., seconded, and unanimously,

(8.) RESOLVED—'That the thanks of this Meeting are due to the
'PUBLIC PRESS, for its able, judicious, and zealous advocacy
'of the cause of enlightened justice and humanity.'

(9.) PETITIONS to both Houses of Parliament, embracing the substance of the 2d, 3d, 4th, and 5th Resolutions, having been read, were adopted by the Meeting, and a motion made, seconded, and agreed to, *nem. diss.*, that His Royal Highness the DUKE OF SUSSEX be requested to present the one to the House of LORDS, and Joseph HUME, Esq. (as one of the Representatives for the County of Middlesex,) the other to the House of COMMONS.†

Previous to the separation of the company, upon the motion of

* Communications for the Society are to be addressed to W. B. S. TAYLOR, Esq., *Hon. Sec.*, 40, Trinity Square, Tower Hill, LONDON.

† These Petitions were afterward respectively presented to both Houses of Parliament. See *post*, Vol. ii.

Thomas B. WRIGHTSON, Esq., seconded by William ALLEN, F.R.S., Thanks were voted to Basil MONTAGU, Esq., who had presided at the Meeting after Lord NUGENT, compelled to do so by another engagement, had quitted the Chair.

Executions revived in London for House-breaking with Larceny.—Case of John Druitt.

From the Recorder's report we perceive that, although *Macdonough*, the forger, about whose fate some apprehensions were entertained, has *been spared;* a man, named *Druitt* has been selected for execution, whose crime, as stated in the report, is that of *house-breaking*. We are not acquainted with the particulars of his case, but we presume it is one not aggravated by an attempt upon life.

We put it to the Government whether, on the eve of a general amelioration of the law, they ought to exhibit to the people the barbarizing spectacle of an execution for such an offence? We implore them not to tarnish the credit which their support of Mr. EWART's Bill will obtain for them among the enlightened people of England, by taking the blood of this solitary victim for a violation of the rights of property, and that, too, upon the same scaffold on which the *Burkites* lately suffered for their enormous crimes. Who will be benefited by the violent death of this miserable man? What good purpose will it serve? Will his blood place those in a better situation who were the sufferers by his offence? Neither in France, nor the United States of America, would he be punished with death. Why should the *life of man* be *cheaper in England!—Morning Herald, Friday, June* 1, 1832.

Case of John Druitt continued—Grounds for a commutation of the Sentence.

We alluded the other day to the case of *John Druitt*, who was convicted of what is technically called *house-breaking*, at the April Sessions at the Old Bailey, and on whom

the law has been left to 'take its course,'—that law being satisfied with nothing short of the life of the offender. Since we adverted to his case before, we have looked into the official report of the Old Bailey trials, and we find that he was convicted on two indictments—one for breaking and entering the house of Harriett Walbridge, in the parish of St. Pancras; and stealing thereout some trinkets, and a few articles of plate; the other for breaking and entering the dwelling-house (but in reality the warehouse, being under the same roof with the former,) of Elizabeth Kemp, and stealing thereout a quantity of tobacco and cigars, and about £10 in money. There were other charges against him, we understand, which were not tried.

In both cases the prisoner was convicted on circumstantial evidence only. We merely state this fact, without making any point upon it further than to observe that, even in cases of the highest crime—that of murder—great caution ought to be used before life be taken, where the conviction only rests upon inference. This subject was ably handled by Mr. O'CONNELL, at the PUBLIC MEETING of the Society for the Mitigation of the Criminal Code, on Saturday [*Ante*, p. 291]; but we do not mean to enter into that question now. The present is not one of those cases in which we urge any thing in mitigation of punishment, on the ground of the witnesses having sworn under the influence of malice or mistake. We will take it that the man was guilty of all that was alleged against him in both the indictments on which he was tried. As to the other indictments, we consider that they ought not to weigh a feather in the scale; for it is quite consistent with his guilt in the other cases, that he might have been innocent of those charges, and, if tried upon them, might have been acquitted. If those charges which Baron VAUGHAN did not choose to try, were thrown into the scale against the prisoner before THE KING IN COUNCIL, and made to preponderate in favour of the infliction of the penalty of *death*, such a proceeding was

contrary to every principle of justice, and to the fair and reasonable presumption of the law, that a man is to be considered innocent of every criminal charge, the truth of which has not been ascertained by a judicial investigation.

Taking, therefore, the verdicts of *guilty* in both instances to be correct, we ask what is the peculiar enormity of the offence for which a Government, composed of men who, with one or two exceptions, had long ago avowed themselves the disciples of ROMILLY's enlightened notions of Criminal Law, think nothing but blood can be an adequate sacrifice? The law calls the offence *house-breaking*, which means the felonious entry of a house, *not* in the *night-time*, by real or constructive force, with the intention to steal. When the offence is committed in the night-time, it is called *burglary*, which is described by all writers on Criminal Law as a more aggravated species of house-breaking, yet both are *equally* punishable with *death*. But, even for this offence, the law is now very rarely carried into effect; and, on the Circuits, it has of late years become the universal practice of the JUDGES not to leave a man for execution, unless the *burglary* be attended with circumstances of unusual terror and personal violence.

We recollect a case which was tried about two years ago, at the Assizes for Buckinghamshire, of two men for burglary —they were taken in the fact; and, from what transpired on the trial, they were evidently practised, and what may be called professional thieves, who had their head-quarters at Kensington, and made excursions into the country, to carry on a system of depredation in the most premeditated manner. They may be said to have 'gone circuit,' for the purpose of house-breaking and burglary. On one of them was found a thieves' memorandum-book, in which a great number of houses—if we recollect right, as many as between twenty and thirty—were entered, which they had *planned to rob*. Yet the Judge who tried them was content with having the sentence *recorded;* and the punishment of the law, under a Tory Government, was commuted to *transportation for life*.

Can a much stronger instance of the capricious operation of that judicial discretion which our laws allow, be given, than to have spared those criminals, and to execute *Druitt*? Let us even suppose, that *Druitt* had become acquainted with a regular gang of plunderers; we understand, that, up to within about a fortnight of last Christmas, he had borne an irreproachable character; and surely that ought to weigh in his favour.

We recollect the case of a man, named *Dowsett*, who was tried about three or four years ago at Aylesbury, if we mistake not, before Mr. Baron VAUGHAN, the same Learned Judge who tried *Druitt*. He had gone as the leader of a gang of burglars, who, disguised in shirts, and with blackened faces, carrying dark lanterns, scaled the window of a clergyman's house, and inflicted great terror and some personal violence on the inmates. *Dowsett*, though he acted as leader of the party, inflicted no violence himself; but it was ascertained that he was a professional burglar, and an instructor of thieves—making it his practice to inveigle young persons into crime, and, one of his apprentices in guilt had been hanged the year before. Yet this man's sentence was commuted to transportation *under a Tory* Ministry. If *Druitt* be hanged, will not this afford another striking instance of the inequality of punishment, and the confusion of the principles of justice produced in the practice of our law by judicial caprice, and that too under a Whig Administration.

Macdonough, the forger, on whose case we wrote some time ago, has been spared. He was also convicted on two indictments. His crime was, at least, as bad in moral turpitude as *Druitt's*, and more dangerous as an example; yet he was rightly spared: for, to punish offences against property *equally* with crimes of violence and blood, is as bad in point of public policy, as it is monstrous in point of moral principle. The present Lord Chancellor (BROUGHAM), Lords GRENVILLE, GREY, and HOLLAND, formerly contended for the abrogation of capital punishment for offences against

property, as being the most *ineffective* of all punishments. Besides, according to the Parliamentary Returns, we find, that of 517 persons convicted of house-breaking last year, only *one* was executed! A law so incapable of being carried into effect, must soon be erased from the Statute-book*; and, why should our Whig Government select a solitary victim now, to shock the public with the spectacle of human blood unprofitably shed? Is it right that the public feeling should be shocked and disgusted, by seeing the same punishment inflicted upon one who has stolen some property from the dwelling, as the law awards to such a crime as the murder of Mr. Paas?—*Morning Herald, Monday, June 4*, 1832.

Case of John Druitt continued.—Insinuation, which had gained insertion in the Globe Newspaper, refuted.

* * * * * We will take this opportunity of adverting to the commentary made some time last week by an Evening Paper (*The Globe*) upon some observations of ours, relative to the disgusting spectacle with which our liberal Government treated the people in the front of Newgate, not many days ago, when they inflicted upon *Druitt*, for that species of theft called house-breaking, but which was untruly stated to be burglary, the same punishment which the law awards to the murderer, or parricide. The Evening Paper in question asked how we knew that Lords BROUGHAM, GREY, and HOLLAND *advised* THE KING to withhold his clemency from *Druitt*; and then entered into a statement relative to the mode of proceeding in the PRIVY COUNCIL, the obvious drift of which was to throw the blame of *Druitt's* execution on THE KING!! Among other things it was said that the votes

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* In the next session of parliament this law, as predicted by the writer in the *Morning Herald*, was erased from the Statute-book, by the passing of Mr. LENNARD'S Bill (*Vide* 3 & 4 Will. IV, cap. 44). *Druitt* was the last victim of the expiring law.—See note at p. 274, as to other criminals executed under similar circumstances.—ED.

of the MINISTERS were in no sense necessary to the decision, as *that decision rests entirely in the King's breast.*

A Weekly Paper *(The Examiner)*, which has undoubtedly given a very able and determined opposition to exterminating laws, falls into the notion which *The Globe* only insinuated; and, taking THE KING as the only *responsible* party to the execution of the criminal, although, according to the Constitution, he is the only party *not* responsible, says,—

'It is fearful to think that the decision on life or death rests 'entirely in THE KING'S breast. Whoever that King may be, and 'whoever he is, he is likely to be the person in the Council least prac-'tised in investigation, and least qualified in every respect for the 'formation of a judgment.'

Now we say, that in this, as in all other matters of State, *the Ministers* are, as the responsible advisers of the Crown, the persons in whose breasts the *decision entirely rests.* THE KING is bound in this, as in other matters, both of foreign and domestic policy, to abide by the advice of HIS MINISTERS; and consequently, without pretending to dive into the secrets of Privy Councils, we may fairly draw from the fact that *Druitt* was executed, the inference that Earl GREY, the Premier, and Lords BROUGHAM and HOLLAND, two of the leading Members of the Cabinet, and pupils of ROMILLY in Criminal Jurisprudence, approved of that execution.

Independently of this, however, we do happen to *know* that *certain distinguished* MINISTERS *were favourable* to the sanguinary enforcement of the law; and, in expressing their opinions, we have reason to believe they uttered the sentiments of some other Members of the Cabinet:—why then should the blame of that unnecessary sacrifice of life be thrown upon THE KING?

We have it on the authority of one who heard the fact from a Member of the Privy Council, (at present a Cabinet Minister,) that he frequently saw GEORGE THE FOURTH in a state of extraordinary agitation, at the meeting of the

COUNCIL, when the fate of a criminal was under consideration. He would contend the matter with the Ministers, and leave the table, and lean sometimes on the chimney-piece, advocating the cause of mercy, until overruled by his responsible advisers.

We know the late Mr. HUSKISSON declared, a short time before his melancholy fate, that he was present at the COUNCIL which decided on *Fauntleroy's* fate, and that the impression of overwhelming feeling on that occasion never left his mind. He admitted it was unaccountable that any Minister should desire to possess the awful responsibility of recommending executions, even under aggravated circumstances. So much for what has been stated of the decision resting entirely in THE KING'S breast!—*Morning Herald, Thursday, June* 14, 1832.

Sir Thomas DENMAN'S *Bill to abolish the punishment of death in cases of* FORGERY.

That the *inefficacy* of our criminal laws is as remarkable as their inhumanity, was fully shewn during the discussions on the Forgery Bill [of 1830]. It was with great satisfaction we heard it announced by the Attorney-General, [Sir Thomas DENMAN,] that he had a Bill prepared, to abolish the penalty of *death* in *all cases of forgery*. We hope he will lose no time in bringing it in, according to his promise. Our readers will see, by an advertisement in our columns to-day, that there is to be a PUBLIC MEETING, on the punishment of death, at Exeter Hall, on Saturday next. The state of the laws concerns all men.—*Morning Herald, Wednesday, May* 30, 1832.

[The following extract from the report of the parliamentary debate, is inserted to explain the foregoing paragraph. The announcement, in respect to the *Forgery Bill*, was made during the period of the brief ministerial *inter-regnum*,

when it was supposed that the Duke of WELLINGTON was engaged in forming a *new* Administration.]

HOUSE OF COMMONS, *Friday*, *May* 11, 1832.

Dr. LUSHINGTON wished to ask a question of his Honourable and Learned Friend, the Attorney-General. He had many petitions to present for the abolition of the punishment of death; and he was anxious to know whether His Majesty's Government were prepared to bring forward any measure on the subject, particularly with the view of doing away capital punishment in cases of forgery.

The ATTORNEY-GENERAL said that, in consequence of the communications made to him, he had mentioned the subject to the Lord Chancellor, who approved of a measure being brought in. He (the Attorney-General) had prepared a Bill which would do away with the punishment of death in *all cases* of forgery, and would be introduced *as soon as an Administration was formed.*†——*Times*, *Saturday*, *May* 12, 1832.

Sir Thomas DENMAN'S *Forgery Bill continued.*

The Attorney-General's Notice of Motiop for leave to bring in a Bill to abolish the punishment of *death* for the crime of *forgery*, stands for to-day. We hope it will not be deferred. It is time that laws, which make human life an unavailing sacrifice to the paper-credit system, should be obliterated from the Statute-book of a civilized people. Reason denounces, and has long denounced them—dispassionate justice disclaims them—public opinion calls for their extinction—bankers and commercial men petition against them, because they are ineffective—all men of Christian feeling abhor them, because they are revengeful—the day has gone by when they can be executed:—why, then, should they not, at once, and for ever, be erased from the Statute-book?

The public recollect our exertions to obtain the repeal of the forgery laws under the Duke of WELLINGTON'S Government.* At that time, when Sir Robert PEEL was endeavour-

* See *ante*, p. 6, *et seq.* † See *post*, p. 306, *et seq.*

ing to perpetuate enactments which degrade justice into vengeance, Sir Edward SUGDEN, then Solicitor-General, was driven into such difficulty, in seeking for arguments to support the views of the Secretary for the Home Department, that he was obliged to have recourse to the personal character of that functionary, as affording a guarantee that the law, though objectionable in itself, would not be abused. It was certainly asking a great deal of the House of Commons, to require that they should prefer bad laws to good ones, in compliment to a Secretary of State! Yet such was the legislative logic of Sir Edward SUGDEN!

In performing his task as a conservator of capital punishments, the Learned Solicitor-General said—

'With respect to the punishment, the conduct of the present 'Administration, and the character of my Right Honourable Friend at 'the head of the Home Department, ought to afford the greatest con- 'fidence that the utmost penalty of the law will be carried into effect 'in cases only which require it to be so. Under existing circumstances, 'at all events, there is *no danger that the severity of the law will be* '*improperly applied.*'

We refer more particularly to this mode of arguing the question at the present juncture; because it is precisely the excuse for doing nothing, adopted, under a Whig Government, by lukewarm or insincere advocates of a reform in our criminal jurisprudence. They say, 'Have confidence in a liberal Administration:—how can you suppose *they* will execute laws which they have, when out of office, so energetically denounced, and which they stand pledged to alter? Under existing circumstances, at all events, there is no danger that the severity of the law will be improperly applied.' —We will answer this argument, or rather this excuse for indolence or treachery, not in our own words, but in the language of one who fills almost the highest place in the present Administration—we mean Lord BROUGHAM. Here are his words:—

'So monstrous a doctrine it has never been my fortune to hear in

'this House before; although since I have enjoyed a seat here, many 'extravagant doctrines have been promulgated in my hearing. Are we 'to be seriously told that because, at a given moment, we have a 'moderate and liberal Home Secretary, and a Government which may 'discharge its functions with popularity, we should, therefore, forsooth, 'confine our legislation to the accidents of the hour, and so dismiss all 'concern for past, present, and future? We are called upon to legis- 'late, *not for this or that Administration* (and the present may be of a 'duration very long, or—very short, for aught that I know)—but for pos- 'terity. Are we then to be called upon to swerve from our own opinions 'and principles, because we have *confidence in the Government*? This 'is pushing the argument of confidence, which we hear of in political 'and party matters, to an extent *so monstrous*, that I could hardly 'believe my ears when I heard it delivered by so correct and astute a 'man as my Honourable and Learned Friend the Solicitor-General.'*

To this argument of the present Lord Chancellor, against the mischievous folly of placing too much confidence in a Government of liberal professions, let us add the melancholy fact of the present Administration, having *deliberately* selected two forgers for execution at Lancaster, about a year ago,† whose crimes were far inferior in enormity to those of *Savary*, and the *Rev. Peter Fenn*, and *Williams*, the attorney, who experienced mercy from the Government of Sir Robert PEEL. It is true that *Calvert* and *Collier*, the two convicts to whom we allude, were rescued from the scaffold on the eve of their execution: but while those laws continue on the Statute-book, we know not when public opinion may not have to indignantly remonstrate against their extreme application.—*Morning Herald, Thursday, June* 14, 1832.

Postponements of Sir Thomas DENMAN'S *Forgery Bill.*

The postponed Motion of the Attorney-General, relative to the forgery law, stands for discussion this evening. Whether it is to be further postponed we know not; but we trust that those Members of Parliament who are friendly to the

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* See Note p. 274. † See *ante*, p. 152.

reform of a barbarous system of Criminal Law, will give as full an attendance in their places in parliament as they did when last the Attorney-General so unexpectedly put off this measure of his own, which had been already but *too long delayed*. Certainly no adequate reason was given for the delay—none that would have prevented the pressing on of a Tax Bill, or a Vote of Supply, involving millions of the public money, with, perhaps, not one-tenth the number of persons in the House: but it is a pleasanter task—a task more sincerely undertaken by official persons, and therefore more strenuously persevered in—to make laws to transfer the money from the pockets of the people to the coffers of the Government, than to legislate for the improvement of the institutions of society.

The first Notice of this Motion for leave to bring in a Bill to repeal the punishment of death in cases of forgery, was given [May 11] during that short Ministerial *interregnum*, when it was supposed the Duke of WELLINGTON was engaged in forming a new Administration.* Sir Thomas DENMAN then said that he would move for leave to bring in the Bill as soon as the Ministry should be formed. We have no doubt he would, in that case, have kept his word. The attempt to form a *new* Ministry was not successful; and the Bill, which was to be one of the first acts of a Whig *Opposition*, has not yet been brought in by the Whig *Government*. It is a melancholy reflection that, in this respect, the cause of rational justice, of civilization, and humanity has been delayed, not because a Tory Administration came into power, but because a Whig Ministry retained their places. We only state the fact—let others account for it.

It is quite certain that those legislators who overloaded our Statute-book with laws inflicting death, for offences not subject to that penalty by the ancient COMMON LAW of Eng-

* *Ante*, p. 303.

land, among which this of *forgery* is one, did not evince any want of zeal or activity in pressing on their atrocious enactments. It is easy, nay pleasant, if we may judge from the facility with which it is often done, to disseminate immoral and barbarous principles through the medium of vicious laws, and to blunt the feelings, and brutalize the habits of a people; but, to perform the beneficent duty of restoring the authority of reason, and correcting the evils of bad legislation—this is the difficulty which appals a certain class of patriots, who are bold enough in assailing bad laws, and in suggesting improvements, until they happen to *get possession of that power* which would enable them to realize their own principles; then such persons falter, and swerve in their course, more than others in the career of criminal enterprises.

If the Whigs connected with the Government display any longer the timidity and the wavering which they have manifested, with respect to the Criminal Laws in general, and the law of forgery in particular, and if no independent Member can be found in the present House of Commons to take up the subject, and pursue it with the firmness, and intelligence, and energy which it demands, we must only wait for a Reformed Parliament to repair the consequences of their desertion of a great duty, and brand their insincerity, or moral cowardice, as it deserves.

Why is it that the Whig Attorney-General does not shew the same energy and perseverance in endeavouring to obtain the repeal of the sanguinary law of forgery which Sir Robert Peel evinced in obtaining its enactment? Is not the Session of Parliament now *drawing to a close*—and is it to be supposed that any time is to be lost, if it be really intended that any thing effectual shall be done in both Houses of the Legislature during the present Session?

Why is England behind all the civilized nations of the earth on the question of Criminal Law? Why should this otherwise enlightened country be the last refuge of barbarous laws? Why should human life be cheaper in England

than in France or Holland, or even than in America? Even in the midst of the political troubles that France has been involved in, ever since her last revolution, the Chambers found time to make considerable improvements and ameliorations in the Criminal Law. One improvement was to abolish the penalty of death in all cases of forgery.* The British House of Commons had decided against capital punishment for this offence under a Tory Administration. We then gave all the assistance in our power to the battle which the Whigs and the friends of humanity fought against legislative barbarism.† Little did we think that the time would come, when we should find it almost as difficult to induce those Whigs to make a single movement in support of their own principles of criminal law, though in the full enjoyment of power, as we formerly did to extort a decision of the House of Commons against the sanguinary prejudices of their political rivals.

The capital law of forgery is *in practice at an end*. Who will dare to execute what public opinion has so completely abolished? Why then not at once erase from the Statute-book a law which is impracticable, and a punishment which is a mockery? Why not give an effective protection to commercial property against forgers by a law that, not being repugnant to reason, to morality, and the best feelings of our nature, can be executed uniformly?—for, well does BECCARIA observe, that the efficacy of law consists *not in the severity*, but the *certainty*, of punishment. America has abolished the cruel laws which she derived from this country; —she has effective secondary punishments in imprisonment, fine, hard labour, and occasional solitary confinement. So admirably is her penitentiary system conducted in some of the States of that great Union, that the crime of forgery, which, while it was a capital offence, was very frequent, is now scarcely ever known.

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* See *post*, vol. ii. † See *ante*, p. 6, *et seq.*

We have mentioned Holland—one of the most commercial countries of Europe. Is forgery punished there with death? No. The Dutch have been accused of being great worshippers of Mammon; but they do not propitiate that idol with the sacrifices of human blood which are offered on his altars in England. The proof of this will be found in "Van der Linden's Institutes of Holland," translated by Jabez Henry, Esq., Barrister. Under the head of Forgery we find a note of the learned translator, of which we quote, as most applicable to our argument, the following words:—

'It may be further observed, as a proof that those penal statutes 'which grossly offend, by their severity, the natural ideas of proportion 'in criminal justice, *virtually repeal themselves;* and that the two 'ordinances of the Emperor CHARLES V, affixing the punishment of 'death in cases of bankruptcy and *forgery*, although passed as early as 'the years 1540 and 1545, have *never* yet been acted upon in a *single* 'instance in Holland—the most commercial State in Europe.'

Yet, what human hecatombs have been offered up for the offence in this country! The heart recoils at the recollection of the promiscuous massacres, which used to take place in the front of Newgate, on Bank of England prosecutions for forging *one-pound notes!*

We observe with pain and regret, that there never is any amelioration of the Criminal Law introduced into the Upper House of Parliament, when there are not some Law Lords found ever ready to come forward in support of the exterminating system. We respect the Judges in their proper situation; but the influence of the system under which they have been educated, has generally disqualified them from being competent legislators on the laws which they daily administer;—they learn to respect the very errors of those laws, of which they are the Oracles. It is therefore that our greatest constitutional writers express their admiration of that theoretic principle of our Constitution which separates the legislative from the judicial functions, and places them in different hands. It is a theory which, like

some other of our Constitutional doctrines, has been sadly violated in practice. BLACKSTONE says,—

'In the distinct and separate existence of the judicial power in a 'peculiar body of men, nominated, indeed, but not removable at plea- 'sure, by the Crown, consists one main preservative of the public 'liberty, which cannot subsist long in any State, unless the admini- 'stration of common justice be in some degree separated both from the 'legislative and also from the executive power.'

And again—

'Nothing is more to be avoided in a free Constitution than uniting 'the provinces of a Judge and a Minister of State.'

Yet this salutary maxim is continually violated. Even the execution of *Druitt*, the other day, which produced such a general sensation of disgust, was as much the work of certain Law Lords, as of any lay advisers of the Crown.* Judges, who administer the law with the greatest uprightness and purity, may have their reason so warped by the system to which they are accustomed, as to be the last persons that ought to be consulted in criminal legislation.—*Morning Herald, Thursday, June* 21, 1832.

Sir Thomas DENMAN'S *Forgery Bill continued.*

The Second Reading and the discussion on the *Forgery Bill* brought in by the Attorney-General, were fixed for this day.

Having used our utmost exertions to procure the amelioration of the law contemplated by this Bill, under the most adverse circumstances, we cannot fail to give it our cordial assistance in the present comparatively favourable state of things. Public opinion is now ripe for the change which reason has long advocated—which civilization approves, and which the real interests of justice demand. *The law must cease to be sanguinary, that it may begin to be effective.*

We trust there will be a full attendance in the House of

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* See *ante*, p. 301.

Commons this evening, of the Members who are friendly to the improvement and thorough reform of our Criminal Code. It is not only necessary for that purpose that the Forgery Bill should be carried, but that it should be carried with such a demonstration of strength, as will convince the public that the present House of Commons has sufficient intelligence and virtue, to reflect upon more than the question of Parliamentary Reform—the sense of the country at large.

Though we do not concur in opinion with those persons who think the real question for the legislature is the relative *efficacy* or *inefficacy* of capital punishment compared with milder penalties—though, on the contrary, we are of opinion, and we are glad to find it is also the opinion of the able writer on Criminal Law in the *Standard*, that the Divine command, which says, 'thou shalt do no murder,' applies to legislative bodies, as well as individuals—though we differ, so far, in opinion from Lord BROUGHAM, whose argument would go the length of justifying the taking human life for the *most trivial* offence, if that punishment were only found to be *efficacious;* yet we are willing to rest the question, as to the abolition of the punishment of death for *forgery*, upon the simple issue of *efficacy* and *non-efficacy;*—and, without going into any parade of calculation and detail on the subject, we consider the petition signed by *a thousand bankers**—men whose existence is *paper-credit*—praying for the repeal of the capital law, as affording *no protection* to their property, to be decisive on the subject.

Lord ELDON, in the debate upon Mr. EWART'S Bill in the House of Lords, said, that for twenty-five years in which he had to advise His Majesty in Council on the Recorder of London's report, he never did this without first having read over the notes of the evidence, and made an extract of it. This certainly implied great care and caution;—yet, how did it happen, that, during his Lordship's official existence, scores of human beings were immolated in the front of Newgate,

* See *ante*, p. 38.

for forging one-pound notes?—while the crime increased, until the feelings of Jurors revolted, and they turned with disgust from the work of blood?*

His Lordship also said on that occasion—'It was easy to 'talk of secondary punishments, but after twenty-five years' 'consideration, he was never yet able to discover a fit one.' The proper answer to that remark, was what Lord Dacre gave—'We have secondary punishments already, which we 'apply to almost every case; we have only to assimilate them 'to those of North America and the Netherlands, to make 'them more efficient.' But the fact is, some legislators find it easier to hang men than to frame wise laws.

It may be right to notice that the Bill of the Attorney-General, is a Bill to *repeal* so much of Sir Robert Peel's Bill—the 1st William IV, cap. 66—as relates to the punishment of *death*; and, does not introduce any new matter, with the exception of a provision, and a very proper one it is, to prevent justice from being defeated by clerical and verbal inaccuracies—which provision makes it unnecessary to set forth any copy, or *fac-simile*, of the instrument alleged to be forged in the information or indictment; but that it shall be sufficient to describe it in such a manner as would sustain an indictment for *stealing* the same. This Bill therefore only goes to *amend "Peel's Act;"* and as that Act, with the exception of the forgery of the Great and Privy Seal of Ireland, and of any of His Majesty's Seals appointed by the Articles of Union to be used in Scotland, applied only to offences committed *in England*, the Bill of the Attorney-General for repealing the penalty of death, does, as it now stands, extend no further:—consequently, if it were passed to-morrow, persons might, by law, be hanged on the other side of the Tweed, or of the Irish Channel, for offences *not punishable with death* in England. This should not be. We do not think we should legislate in such a way as to shew that we hold the lives of the natives of Scotland, or

* See extracts from the *Edinburgh Review*, *ante*, p. 10, *et seq.*

Ireland of less account than those of their English fellow-subjects. We suggest to the Attorney-General the propriety of extending the provisions of this truly enlightened measure to all parts of the United Kingdom.*—*Morning Herald, Friday, June* 29, 1832.

Sir Thomas DENMAN's *Forgery Bill continued.*

This evening the Forgery Bill of the Attorney-General stands for discussion in Committee. We are glad to find, from what fell from the Hon. and Learned Member when he last postponed it, that the suggestion which we threw out, of extending the provisions of the Bill to Ireland and Scotland, is likely to be adopted. We hope that a sufficient number of Members, desirous of the enlightened reform of the criminal law, whose revengeful character defeats the ends of justice, will be in attendance this evening, to give the Bill their support. If further postponements take place, we must infer that the Attorney-General did not bring it in with the intention of carrying it through Parliament this Session; as in that case it will be impossible to get it through both Houses before the prorogation, unless that event is much farther off than is generally anticipated.—*Morning Herald, Friday, July* 13, 1832.

Editorial Remarks on the Forgery Bill, and its final passing.

The discussion of the Forgery Bill was, subsequently, again and again postponed, till, on Tuesday, July 31, it came on, near the breaking up of parliament. Upon that occasion, in its final stage, and during a lengthened

* This Bill was extended to Scotland and Ireland, in a future stage.

debate, in which all the argument was *against* the capital penalty, an attempt was made—by that manœuvre called, "*Dropping the House,*"—*to get rid of the subject for the Session. The attempt was foiled.* That night the Bill *passed the* COMMONS, *abolishing all the capital provisions* of Sir Robert PEEL'S consolidating Forgery Act of 1830. It was then sent up to the LORDS.

In the UPPER HOUSE it also passed, but not unmutilated. Two exceptions were there proposed as capital, and received the too-ready acquiescence of Ministers and their Lordships—namely, *Wills,* and *Powers of Attorney* relating to certain public funds. Who were the authors of these exceptions?—Their names go down to posterity. They were, the Marquis of LANSDOWNE, once a coadjutor of ROMILLY, but now a Member of the Government, and Lord WYNFORD.

The Bill was immediately returned to the COMMONS for their concurrence in the capital exceptions. This was on the 15th of August, the day before the prorogation of parliament. The COMMONS hesitated. Their hesitation was strengthened by a circumstance which had transpired. Under the then existing capital law, several persons had been convicted of forging seamen's *Wills,* and were in Newgate, awaiting the issue of the Recorder's Report to the PRIVY COUNCIL. Nobody, however, dreamed of their *lives* being in danger; for,

certain leading Members of the (Whig) Administration, and others in connexion with them, had declared, that, after the Vote of the COMMONS, (June 7, 1830,* in opposition to the Tory Minister of the day,)—*it was impossible there could ever be another execution for Forgery.* The inference on the part of the people was this,—"Still "less can there be an execution, now that our Repre- "sentatives have a *second time* voted the repeal of the "extreme penalty; and now, without reserving even the "formerly excepted case (of 1830) of *Wills.*"

But, somehow, it did transpire, upon authority not to be questioned, that, when the *new* Forgery Bill, with its capital exceptions, should have passed into law, some of those men who had been legally convicted under the former capital law, *were to be ordered for execution at the* PRIVY COUNCIL.

Mr. HUME, who had taken many opportunities of advocating the amelioration of our Penal Law, being now Member for Middlesex, the county in which these *Will. forgers* had been convicted, was informed of the intended immolation, and hastened to his place in parliament, if possible to frustrate it. For this purpose he threatened to divide the House against the Bill, and thus to get it altogether rejected—a course which alarmed Lord ALTHORP, Chancellor of the Exchequer, then present, because it

* *Ante*, p. 52.

was completely in Mr. HUME's power to do so. The Hon. Member, however, was willing to forego his inclination, upon an understanding that the adoption of the LORDS' *exceptions* should not have a fatal influence upon these convicts:—he then permitted that adoption.

The next day the Bill of Sir Thomas DENMAN received the Royal Assent, when THE KING in person prorogued the parliament. It passed to the Statute-book as the 2 & 3 Will. IV, cap. 123.*

As far as concerns the legislative exertions, individually, of Sir Thomas, now Lord, DENMAN, to obtain a repeal of the capital law, in all cases of Forgery, the reader has only to refer to the congratulatory Address to

* In justice to Sir Thomas DENMAN, it should be stated that this Forgery Bill, as originally framed, and as it passed the COMMONS, provided *several degrees* of punishment, the *maximum* being transportation for life: and, that it also preserved to the JUDGES the usual *discretionary power*, as to which they might see fit to award. But, in the UPPER HOUSE, Lord WYNFORD moved an "Amendment," which was agreed to by the Government, destroying this salutary part of the Bill, and compelling the Court, as in the case of his Lordship's "Amendment" to Mr. EWART'S Bill (*Vide* Statute 2 & 3 Will. IV. cap. 62), to pronounce, *in all cases*, the one sentence of transportation *for life*. (See *ante*, p. 287 & 290.)—By a clause in a subsequent Act (3 & 4 Will. IV, cap. 44), the Judges are empowered to *augment* the penalty under both Acts, if they see fit, by imprisonment for four years, or not less than one year, with or without hard labour, *previous* to the transportation; but they are not authorized to shorten the term of transportation, however small the offence.

his Lordship—(upon his elevation to the high office of Chief Justice of the King's Bench,)—voted by the Committee of the SOCIETY for diffusing information on the punishment of Death.—(See *post*, Vol. ii, extract taken from the *Morning Herald*, Jan. 8, 1833.)

Of one more fact the reader should be apprized, lest we be charged with ignorance. There now exist upon the Statute-book some capital enactments unrepealed by the Denman Act. *Repealed by it* they scarce could be; for, the Bill creating them, was contemporaneous with Sir Thomas DENMAN's; or rather, it was more rapid in its growth, though it came later into life. In plain terms, it was a *Government* Bill: and, as such, took precedence, going through with the usual celerity.

How do we prove this? By the Journals of Parliament. Sir Thomas DENMAN's *repealing* Bill was announced as ready, while the Ministry were actually out of Office, May 11,* but did not pass into a law till August 16. This other Bill, *renewing* capital punishment for sundry forgeries by a provision which its title† did not disclose, was introduced without

* See Attorney General's Speech in the Commons, May 11, 1832, (*ante*, p. 303,) two days after the Ministers went out.

† The Act is intituled "*An Act to transfer the management of cer-*
"*tain Annuities on Lives from the receipt of His Majesty's Exchequer*
"*to the management of the Commissioners for the Reduction of the*

previous notice, after midnight, on the 23d of May, and passed into law, July the 4th. Moreover, in the COMMONS, it went through *every one of its stages past the midnight hour,*—motion for leave, first reading, second reading, committal, report, third reading, and final passing,—all after midnight! Its authors experienced none of that wearisome procrastination, to which the framers of "Ameliorating" Criminal Law Bills are compelled to submit; *this* Bill being, in BURKE'S severe sense of the phrase, a Bill (*inter alia*) *creating "only some new felonies without benefit of clergy."*

But, although that was the case; and, although it was "committed" after midnight, it must not hence be supposed that this Bill was one of those which are only passed *pro formâ*, receiving but little attention from the Minister of the Crown; or, that its containing such a penal clause was the result of mere accident—a supposition which certainly did occur to us as possible, the moment we first heard of it. No: on the contrary, the Bill, as *originally* framed (a copy lies before us), is drawn with no ordinary caution; and, what is more, in that stage, called the committal, it received deliberate attention, and various "Amendments" from an expe-

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"*National Debt; and to amend an Act for enabling the said Com-*
"*missioners to grant Life Annuities, and Annuities for Terms of*
"*Years.*"—2 & 3 Will. IV, cap. 59.

rienced hand, some of which were made in the clause in question, forming the 19th section of the Act—the clause that enacts for *all the frauds* by forgery, the forfeiture of life. But none of those Amendments touched that sanguinary provision of the Bill. They were not designed to touch it. That was a settled point before the Bill was introduced.

The Act to which we allude, the 2 & 3 Will. IV, cap. 59, which, by its title and preamble, would appear to have reference merely to certain fiscal arrangements, and the transfer of certain powers and duties from the Auditor of the Exchequer and others, to the Commissioners for the Reduction of the National Debt, is in reality a statute of blood. The 19th section reveals the exterminating principle, by enacting, that, to *forge*, counterfeit, or alter—or *cause* or procure to be forged, counterfeited, or altered—or the knowingly *acting* or assisting in the forging, counterfeiting, or altering any *declaration, warrant, order,* or *other* instrument, or any *affidavit* or *affirmation* required to be made by the *Act,* or by the *Commissioners* for the Reduction of the National Debt under the provisions &c., shall, all and every one of those fraudulent acts, be offences punishable with *death.* The same dreadful penalty is attached to the forging, causing, or procuring to be forged &c., any *certificate* or *order* of *any officer*

of the Commissioners, or the *name* of any person, in or to any *transfer* of any *annuity*, or in or to any *certificate, order, warrant,* or *other* instrument for the *payment* of money for the purchase of any annuity &c., or in or to any *transfer* or *acceptance* of any such annuity, in the *books* of the said Commissioners, or in or to any *receipt* or *discharge* for any such annuity, or in or to any receipt or discharge for any *payment* due or to become due thereon, or in or to any *letter of attorney,* or *other authority* or *instrument* to authorize the *transfer* or *acceptance* or *receipt* of any annuities or life annuity of whatsoever kind, granted, either under the present Act, or under *certain recited Acts.* Thus widely does this Act—which, as to any knowledge of it out of doors at that time, silently crept through the legislature, like a thief in the night—spread the snares of *death* through the highways and by-ways of fiscal regulation.

Nor was this all—"bad goes before, but worse remains behind:"—some of the offences, which by Sir Robert PEEL'S Bill *ceased to be capital,* were actually *restored* to the class of *capital* offences by this nefarious statute. While Sir Thomas DENMAN'S Bill, as originally brought into the COMMONS, went to repeal all the capital enactments of Sir Robert PEEL'S Act, the Government, under which the extended amelioration of the law of forgery was openly professed, did furtively

re-enact a portion of the exterminating severity of the law by *one* Bill, which they had denounced and repealed by *the other*. Sir Robert PEEL's Act * had repealed the penalty of death in cases of forgery of *baptismal*, and *marriage* registers—Sir Thomas DENMAN's Bill left them so repealed; but this Bill, which was passed, as we have shewn, contemporaneously with the latter, revived the enactments of blood, in regard to the forgery of *baptismal* and *marriage* registers, and registers of *births*, (introduced for the first time,) as will be seen by the following extract from it:—

'If any person or persons shall wilfully, falsely, and deceitfully '*personate* any true and real nominee or nominees, or shall wilfully 'utter, or deliver, or produce to any person or persons acting under the 'authority of this Act, any forged register, or copy of register of any '*birth*, *baptism*, or *marriage*, or any forged declaration, affidavit, or '*affirmation*, knowing the same to be forged, counterfeited, or altered, 'with intent to defraud His Majesty, His Heirs and Successors, or 'with intent to defraud any person or persons whomsoever; then, and 'in every such case, all and every person and persons so offending, 'and being lawfully convicted thereof, shall be adjudged guilty of 'Felony, *and suffer* DEATH.'—(2 & 3 Will. IV, c. 59, s. 19.)

It will be observed, also, that the false *personation*, which remained *capital* only in *successful* cases by "PEEL's Act," and which was made *non*-capital by "DENMAN's Act," became again *capital* by this Revenue

* 1 Will. IV, cap. 66.

Act in all cases to which the Act applies; and which are all cases of such personations, forgeries, and frauds, as are above described, being practised upon persons acting under the authority of the Act, with the intent therein mentioned.

Thus did Government, with one hand, remove the idol of Draconic legislation from the temple of Justice, (as far as Forgery was concerned,) and set up one of smaller dimensions, but not less revolting features, with the other.

Surprised, the reader asks, Who—in the outset of Criminal Law Reform,—who could have been instructed to bring in such an Act as this?—We give the answer, from the Journals of the House—"Lord Viscount ALTHORP and Mr. RICE"!

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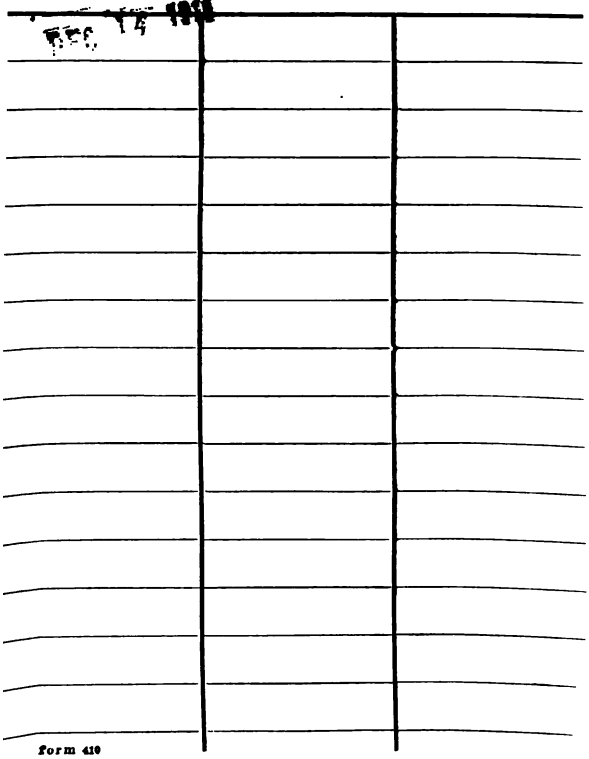
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